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Guide to
**Community Planning
in Wisconsin**

Brian W. Ohm

Guide to Community Planning in Wisconsin

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Guide to Community Planning in Wisconsin

Contents

Preface and Acknowledgments, p. xii

Chapter 1 Introduction to Community Planning, p. 1

1. Why is Planning Important?, p. 1
 - 1.1 Planning and the Public Good, p. 1
2. The Public Planning Process, p. 4
 - 2.1 Preparing for the Planning Process, p. 4
 - 2.1.1 Think About the Geographic Area Planning Should Cover, p. 4
 - 2.1.2 Explore the Possibility of Cooperative Planning, p. 5
 - 2.1.3 Budgeting for the Planning Process, p. 5
 - 2.1.4 Consider Whether You Need an Altogether New Plan, p. 6
 - 2.1.5 Consider Who Should Prepare the Plan, p. 6
 - 2.1.6 Prepare a Request for Proposals, p. 6
 - 2.1.7 Think About Who is Going to Use the Plan, and How, p. 7
 - 2.1.8 Think About the Form and Appearance of the Plan, p. 7
 - 2.2 Elements of the Planning Process, p. 7
 - 2.2.1 Involving Citizens, p. 8
 - 2.2.1.1 The General Survey, p. 8
 - 2.2.1.2 The Consensus Model, p. 8
 - 2.2.1.3 An "Open House", p. 8
 - 2.2.1.4 Key Community Contact Interviews, p. 9
 - 2.2.1.5 The Focus Group, p. 9
 - 2.2.1.6 Nominal Group Process, p. 9
 - 2.2.1.7 The Futures Workshop or Retreat, p. 9
 - 2.2.1.8 The Citizens' Advisory Committee, p. 9
 - 2.2.1.9 Simulation Games, p. 9
 - 2.2.1.10 Design Charettes, p. 9
 - 2.2.1.11 Guided Tours, p. 9
 - 2.2.1.12 Newsletters and Informational Meetings, p. 10
 - 2.2.1.13 Encourage Citizens by Celebrating Successes, p. 10
 - 2.2.1.14 Understanding the Realities of Citizen Participation, p. 10
 - 2.2.2 Planning Approaches/Issue Identification, p. 10
 - 2.2.2.1 The Blank Slate Approach--Planning as a Learning Process, p. 10
 - 2.2.2.2 The Problem-Oriented Approach, p. 11
 - 2.2.2.3 The Strategic Issues Approach, p. 12
 - 2.2.2.4 The Blue-Sky Approach--Visioning, p. 12
 - 2.2.2.5 The Asset-Based Planning Approach, p. 12
 - 2.2.3 Data Collection and Analysis, p. 13
 - 2.2.4 Defining Community Goals and Objectives, p. 14
 - 2.2.5 Evaluation of Alternatives, p. 14
 - 2.2.6 Plan Development, p. 15

Guide to Community Planning in Wisconsin

- 2.2.7 Plan Adoption, p. 15
- 2.2.8 Implementation: Using the Plan for Continuing Decisions, p. 15
- 2.2.9 Maintaining Plan Effectiveness, p. 16
- 2.3 Attributes of an Effective Plan, p. 16
 - 2.3.1 An Effective Plan Presents Essential Data--But Not Too Much, p. 16
 - 2.3.2 An Effective Plan Describes Alternative Futures, and the Consequences of Alternative Courses of Action, p. 16
 - 2.3.3 An Effective Plan Communicates Key Ideas Clearly and Effectively, p. 16
 - 2.3.4 A Good Plan Offers a Well-Thought-Out and Integrated Program of Action, p. 17
 - 2.3.5 An Effective Plan is Realistic and Achieves Positive Results, p. 17
 - 2.3.6 An Effective Plan Explains the Process Used to Create the Plan, p. 17
- 3. Resource Materials, p. 18
- 4. Endnotes, p. 19

Chapter 2 Types of Plans & Overview of Implementation Tools, p. 20

- 1. Types of Plans, p. 20
 - 1.1. Master Plans, p. 21
 - 1.2. County Development Plans, p. 23
 - 1.3. Comprehensive Plans, p. 24
 - 1.4. Regional Master Plans, p. 26
 - 1.5. Other Types of Plans, p. 26
 - 1.5.1 Metropolitan Transportation Plans, p. 26
 - 1.5.2 Sewer Service Area Plans, p. 27
 - 1.5.3 Cooperative Plan for Boundary Changes, p. 27
 - 1.5.4 Agricultural Preservation Plans, p. 27
 - 1.5.5 County Land and Water Resource Management Plans, p. 27
 - 1.5.6 County Forest Land Use Plans, p. 27
 - 1.5.7 County Park System Plans, p. 27
 - 1.5.8 County Platting/Transportation Plans, p. 28
 - 1.5.9 County Rural Planning, p. 28
 - 1.5.10 County Solid Waste Management Plans, p. 28
 - 1.5.11 Water Resource Related Planning, p. 28
 - 1.5.12 Public Facilities Needs Assessment, p. 28
 - 1.5.13 Tax Increment Financing Project Plans, p. 28
 - 1.5.14 Comprehensive Town Park System Plans, p. 28
 - 1.5.15 Strategic Plans, p. 28
 - 1.5.16 Special Area Plans, p. 28
 - 1.5.17 Site Plans, p. 29
 - 1.5.18 Capital Improvement Plans, p. 29
- 2. Implementing the Plan, p. 30
 - 2.1. Education, p. 30
 - 2.2. Area or Other Special Plans, p. 30
 - 2.3. Local Decision Making, p. 30
 - 2.4. Interim Control Ordinances, p. 31
 - 2.4.1 The Functional Moratoria, p. 31
 - 2.4.2 Local Authority to Impose a Moratorium, p. 31
 - 2.4.3 "Helpful Hints", p. 32

Guide to Community Planning in Wisconsin

- 2.5 Zoning, p. 32
 - 2.5.1 General Zoning, p. 32
 - 2.5.2 Special Types of Zoning, p. 32
 - 2.5.2.1 Floodplain Zoning, p. 33
 - 2.5.2.2 Shoreland Zoning, p. 33
 - 2.5.2.3 Exclusive Agricultural Zoning, p. 33
 - 2.5.2.4 Extraterritorial Zoning, p. 33
- 2.6 Subdivision or Land Division Regulation, p. 33
- 2.7 Official Maps, p. 34
- 2.8 Building, Housing, and Sanitary Codes, and Private Sewage System Ordinances, p. 34
- 2.9 Aesthetic Controls, p. 34
 - 2.9.1 Sign Ordinances, p. 34
 - 2.9.2 Historic Preservation Ordinances, p. 34
 - 2.9.3 Design Review, p. 35
- 2.10 Fiscal Tools, p. 35
 - 2.10.1 Capital Improvements Program, p. 35
 - 2.10.2 Impact Fees, p. 35
 - 2.10.3 Use-Value Assessment, p. 35
 - 2.10.4 Tax Increment Financing (TIF), p. 36
- 2.11 Public Acquisition Programs, p. 36
 - 2.11.1 Eminent Domain, p. 36
 - 2.11.2 Purchase of Development Rights, p. 36
 - 2.11.3 Transfer of Development Rights, p. 36
 - 2.11.4 Conservation Easements, p. 37
- 2.12 Annexation/Incorporation, p. 37
- 2.13 Cooperative Boundary Agreements, p. 37
- 2.14 Intergovernmental Agreements, p. 37
- 2.15 Special Purpose Districts, p. 37
 - 2.15.1 Metropolitan Sewerage Districts, p. 37
 - 2.15.2 Town Sanitary Districts, p. 37
 - 2.15.3 Inland Lake Protection and Rehabilitation Districts, p. 38
 - 2.15.4 Business Improvement Districts, p. 38
 - 2.15.5 Redevelopment Areas, p. 38
- 2.16 Land Trusts, p. 38
- 3. The Takings Issue, p. 39
 - 3.1 Vested Rights, p. 41
- 4. Endnotes, p. 42

Chapter 3 The Plan Commission, p. 48

- 1. Plan Commission Structure, p. 48
 - 1.1 The Municipal Plan Commission, p. 48
 - 1.2 The County Planning and Zoning Agency or Commission, p. 49
 - 1.3 Towns Without Village Powers, p. 49
- 2. Plan Commission Functions, p. 50
 - 2.1 Plan Making, p. 50
 - 2.2 Subdivisions, p. 50
 - 2.3 Zoning, p. 51

Guide to Community Planning in Wisconsin

- 2.4 Official Map, p. 51
- 2.5 Other Referrals, p. 51
- 2.6 Other Programs, p. 51
- 2.7 Day to Day Operations, p. 52
- 2.8 Hold Public Hearings, p. 52
- 3. Convening and Conducting Meetings, p. 53
 - 3.1 Meetings Dates, p. 53
 - 3.2 Giving Notice of Meetings, p. 53
 - 3.3 Other Notice Requirements, p. 53
 - 3.4 The Conduct of Public Hearings, p. 53
 - 3.5 Due Process, p. 54
- 4. What Makes A Good Plan Commissioner?, p. 56
 - 4.1 Ethics, p. 56
- 5. Resource Materials, p. 57
- 6. Endnotes, p. 58

Chapter 4 Data Collection and Analysis, p. 60

- 1. Geographic Information Systems, p. 60
 - 1.1 GIS Technologies, p. 61
 - 1.1.1 Software, p. 61
 - 1.1.2 Hardware, p. 61
 - 1.1.3 Related Technologies, p. 62
 - 1.2 GIS Data, p. 62
 - 1.2.1 Land Ownership, p. 62
 - 1.2.2 Base Map, p. 63
 - 1.2.3 Land Use, p. 63
 - 1.2.4 Zoning, p. 63
 - 1.2.5 Hydrography, p. 64
 - 1.2.6 Topography, p. 64
 - 1.2.7 Imagery, p. 64
 - 1.2.8 Soils, p. 65
 - 1.3 Wisconsin Land Information Program, p. 65
- 2. Population, Housing, and Employment Data, p. 67
- 3. Land Supply/Demand, p. 69
- 4. Fiscal Impact Analysis, p. 71
 - 4.1 Case Study Approach, p. 72
 - 4.2 Per Capita Multiplier Approach, p. 72
 - 4.3 Proportional Valuation Method, p. 74
 - 4.4 Service Standard Method, p. 75
 - 4.5 Comparable City Method, p. 75
 - 4.6 Employment Anticipation Method, p. 76
 - 4.7 Revenue Estimation, p. 76
 - 4.8 The Hierarchy of Land Uses, p. 77
 - 4.9 A Final Word About Fiscal Impact Analysis, p. 78
- 5. Resource Materials, p. 79
- 6. Endnotes, p. 80

Guide to Community Planning in Wisconsin

Chapter 5 Community Design, p. 81

1. Design Review, p. 81
 - 1.1 Crafting Design Guidelines, p. 82
2. Traditional Neighborhood Design, p. 83
3. Cluster Development, p. 85
4. Historic Preservation, p. 86
 - 4.1 Historic Designations, p. 86
 - 4.1.1 State Register of Historic Places, p. 86
 - 4.1.2 National Register of Historic Places, p. 86
 - 4.1.3 Local Register of Historic Places, p. 86
 - 4.2 Historic Preservation Planning, p. 86
 - 4.3 Historic Preservation Ordinances, p. 86
 - 4.3.1 Special Requirements for Cities and Villages, p. 87
 - 4.3.2 Provisions for All Communities, p. 87
 - 4.3.2.1 Certification of Preservation Ordinances, p. 87
 - 4.3.2.2 Certified Local Government, p. 87
 - 4.3.2.3 Local Actions Affecting Historic Properties, p. 87
 - 4.3.2.4 Demolition, p. 88
 - 4.3.2.5 Sale or Lease of Historic Properties, p. 88
 - 4.4 Financial Incentives for Preservation, p. 88
5. Resource Materials, p. 89
6. Endnotes, p. 90

Chapter 6 Zoning, p. 91

1. The Zoning Framework, p. 91
 - 1.1 Zoning Powers and Responsibilities: Wisconsin Counties, Towns, Cities and Villages, p. 92
 - 1.1.1 Counties, p. 92
 - 1.1.2 Towns, p. 93
 - 1.1.2.1 Town Zoning Where There is No County Zoning, p. 93
 - 1.1.2.2 Town Zoning Under “Village Powers”, p. 94
 - 1.1.3 Cities and Village, p. 94
 - 1.2 Developing a Zoning Ordinance, p. 94
 - 1.2.1 Initiation of Work, p. 95
 - 1.2.2 Preparing the Ordinance Draft, p. 95
 - 1.2.3 The Zoning Ordinance Text, p. 95
 - 1.2.4 The Zoning Ordinance Map, p. 96
 - 1.2.5 Administrative Matters, p. 96
 - 1.2.6 Amendments, p. 96
 - 1.2.7 Enforcement Provisions, p. 96
 - 1.2.8 Community Dialogue on a Draft or Redraft, p. 97
 - 1.3 Formal Processing of the Ordinance, p. 97
 - 1.3.1 Identification of the Proposed Zoning Ordinance, p. 97
 - 1.3.2 Public Hearing, p. 97
 - 1.3.3 Plan Commission Action Following the Hearing, p. 98

Guide to Community Planning in Wisconsin

- 1.3.4 Receipt of Draft and Action by Government Body, p. 98
- 1.3.5 Publication and Notice of Adopted Ordinance and Required Consents by Other Governing Bodies, p. 98
 - 1.3.5.1 County Zoning Ordinances, p. 98
 - 1.3.5.2 Town Zoning Ordinances, p. 99
 - 1.3.5.3 City and Village Ordinances; Town Ordinances Adopted Under Village Powers, p. 99
- 1.4 Extraterritorial Zoning, p. 99
- 2. Amending the Zoning Ordinance, p. 101
 - 2.1 General Principles Applicable to Zoning Amendments, p. 101
 - 2.2 Amendment Procedures: Counties, p. 101
 - 2.2.1 Town Veto Over County Zoning Amendments, p. 102
 - 2.2.2 Protest Petitions, p. 103
 - 2.2.3 County Board Action, p. 103
 - 2.2.4 After a Decision Has Been Made, p. 104
 - 2.3 Town, Village, and City Amendment Procedures, p. 105
 - 2.3.1 Amendment Procedures: Towns Not Exercising Village Powers, p. 105
 - 2.3.2 Amendment Procedures: Cities, Villages, and Towns Exercising Village Powers, p. 105
 - 2.4 Spot Zoning, p. 105
 - 2.5 Conditional and Contract Zoning, p. 106
 - 2.5.1 Contract Zoning, p. 106
 - 2.5.2 Conditional Zoning, p. 107
 - 2.6 The Comprehensive Revision Amendment, p. 108
- 3. Variations to Traditional Zoning, p. 110
 - 3.1 Planned Unit Developments, p. 110
 - 3.1.1 The Regulatory Process, p. 111
 - 3.1.2 Standards, p. 112
 - 3.2 Floating Zones, p. 112
 - 3.3 Performance Zoning, p. 113
 - 3.4 Bonus and Incentive Zoning, p. 113
 - 3.5 Overlay Zoning, p. 113
 - 3.6 Mixed Use Zoning, p. 113
 - 3.7 Cluster (or Average Density) Zoning, p. 114
 - 3.8 Inclusionary Zoning, p. 114
- 4. Administering a Zoning Program, p. 115
 - 4.1 Structure for Administration, p. 115
 - 4.2 Process of Administration, p. 115
 - 4.2.1 Community Education, p. 115
 - 4.2.2 Applying the Code, p. 116
 - 4.2.3 Points on Permit *What Ifs?*, p. 116
 - 4.2.4 Conditional Uses, p. 118
 - 4.3 Adjusting the Code, p. 118
 - 4.3.1 Rezoning, p. 118
 - 4.3.2 Variances, p. 119
 - 4.3.3 Administrative Appeals, p. 120
 - 4.4 Nonconformities, p. 121
 - 4.4.1 Statutory Definitions, p. 122
 - 4.4.1.1 Nonconforming Use, p. 122

Guide to Community Planning in Wisconsin

- 4.4.1.2 Nonconforming Structure, p. 122
- 4.4.1.3 Nonconforming Lot, p. 123
- 4.4.2 Statutory Protection of Nonconforming Uses From Local Zoning Regulations, p. 123
- 4.4.3 Statutory Limitation on Extensions, Expansions, or Alterations, p. 123
- 4.4.4 Discontinuance of Nonconforming Uses, p. 124
- 4.4.5 A Summary of Nonconforming Use Basics, p. 124
- 4.4.6 Approaches to Nonconformities, p. 124
- 4.5 Enforcing the Code, p. 125
 - 4.5.1 Citizen Enforcement Actions, p. 126
- 5. Resource Materials, p. 127
- 6. Endnotes, p. 128

Chapter 7 Subdivision Regulations, p. 139

- 1. The Subdivision Regulation Framework, p. 139
 - 1.1 The Evolution of Subdivision Control in Wisconsin, p. 140
 - 1.2 Subdivision Powers and Responsibilities: State, Counties, Towns, Cities, and Villages, p. 141
 - 1.2.1 State Agency Review, p. 142
 - 1.2.2 Local Government Authority, p. 143
 - 1.2.2.1 The Requirements of Chapter 236, p. 143
 - 1.2.2.2 Any Local Ordinance, p. 144
 - 1.2.2.3 The Master Plan, p. 145
 - 1.2.3 Counties and Towns (Unincorporated areas), p. 146
 - 1.2.4 Cities/Villages (Incorporated areas), p. 146
 - 1.2.5 Extraterritorial Plat Review, p. 147
 - 1.3 Condominium Subdivisions, p. 148
- 2. The Local Subdivision Review Process, p. 150
 - 2.1 The Pre-application Conference, p. 150
 - 2.2 Preliminary Plat Review, p. 151
 - 2.2.1 What is the Preliminary Plat--Substance, p. 151
 - 2.2.2 Preliminary Plat Review--Procedure, p. 152
 - 2.2.2.1 Local Approval, p. 152
 - 2.2.2.2 Review by "Objecting" Agencies, p. 152
 - 2.3 Final Plat Review, p. 153
 - 2.3.1 What is the Final Plat--Substance, p. 153
 - 2.3.2 Final Plat Review--Procedure, p. 153
 - 2.4 Vacations and Replats, p. 154
- 3. Subdivision Design Standards, p. 155
- 4. Financing Subdivision Improvements, p. 159
 - 4.1 Required Improvements, p. 159
 - 4.2 Financial Guarantees for Completion and Maintenance of Improvements, p. 160
 - 4.3 Dedication of Land or Fees in Lieu of Dedication, p. 160
 - 4.4 Impact Fees, p. 161
 - 4.4.1 Types of Facilities for Which Impact Fees May Be Used, p. 161
 - 4.4.2 Procedure for Establishing Impact Fees, p. 161
 - 4.5 Legal Standards for Impact Fees, Dedications, and Fees-in-Lieu, p. 161

Guide to Community Planning in Wisconsin

- 4.6 Special Assessments, p. 162
- 4.7 User fees, p. 162
- 5. Resource Materials, p. 163
- 6. Endnotes, p. 164

Chapter 8 Intergovernmental Issues, p. 169

- 1. Annexation, p. 169
 - 1.1 Types of Annexation, p. 170
 - 1.1.1 Unanimous Approval, p. 170
 - 1.1.2 Direct Annexation, p. 170
 - 1.1.3 Annexation by Referendum, p. 170
 - 1.1.4 Annexation of Owned Territory, p. 171
 - 1.1.5 Annexation by Court-Ordered Referendum, p. 171
 - 1.2 The Petition, p. 171
 - 1.3 Annexation Maps, p. 171
 - 1.4 Review of Municipal Annexations by the State, p. 171
 - 1.5 Filing with the Office of the Secretary of the State, p. 172
 - 1.6 Other Annexation Issues, p. 172
- 2. Intergovernmental Agreements, p. 173
 - 2.1 Forms of Cooperative Agreements, p. 173
 - 2.1.1 General Intergovernmental Agreements, p. 173
 - 2.1.2 Boundaries Set by Judicial Decree, p. 174
 - 2.1.3 Boundary Change by Cooperative Plan, p. 174
 - 2.1.4 Municipal Revenue Sharing, p. 174
- 3. Incorporation, p. 177
- 4. Relationship of Local Planning to State/Federal Lands and Laws, p. 179
 - 4.1 Telecommunications--Wireless Facilities Siting, p. 179
 - 4.1.1 Impact on Local Authority, p. 179
 - 4.1.2 Need for Planning & Cooperation, p. 181
 - 4.2 Local Regulation of Satellite "Dishes" and Television Antennas, p. 181
 - 4.3 Americans with Disabilities Act, p. 182
- 5. Indian Nations, p. 184
- 6. Alternative Dispute Resolution (ADR), p. 186
- 7. Endnotes, p. 188

Chapter 9 Transportation, p. 191

- 1. Land Use and Transportation, p. 191
- 2. Planning Assistance, p. 193
 - 2.1 MPR/RPC Planning Assistance, p. 193
 - 2.2 State Multi Modal Transportation Studies, p. 193
 - 2.3 State Planning and Research (SPR), p. 193
 - 2.4 Transit Development Plans (TSPs), p. 193
 - 2.5 Transportation Demand Management (TDM), p. 193
 - 2.6 Surface Transportation Program (STP)--Discretionary, p. 194
 - 2.7 Transportation Facilities Economic Assistance (TEA) and Development Program, p. 194

Guide to Community Planning in Wisconsin

- 2.8 Statewide Transportation Enhancements Program (STEP), p. 194
- 2.9 Aeronautics Assistance, p. 194
- 3. Transportation Facility Control, 196
 - 3.1 Functional Classification of Streets and Highways, p. 196
 - 3.2 Access Control, p. 197
 - 3.3 Driveway Permitting, p. 197
 - 3.4 Access Covenant, p. 197
 - 3.5 Transportation Impact Analyses (TIA), p. 197
 - 3.6 Land Division/Development Review, p. 198
 - 3.7 Zoning/Site Plan Review, p. 198
 - 3.8 Land Use Planning Around Airports, p. 198
- 4. Endnotes, p. 200

Chapter 10 Natural Resources, p. 201

- 1. Natural Resources Management, p. 201
 - 1.1 DNR's Organizational Structure, p. 202
 - 1.1.1 Geographic Management Units, p. 202
 - 1.2 DNR Property Acquisition and Management, p. 204
 - 1.2.1 Master Planning, p. 204
 - 1.2.2 Payments in Lieu of Taxes, p. 204
 - 1.3 Stewardship Programs, p. 205
- 2. Floodplain and Shoreland Zoning, p. 206
 - 2.1 County, City, and Village Floodplain Ordinances, p. 206
 - 2.2 Shoreland Management Zoning Ordinances, p. 206
 - 2.3 City and Village Shoreland Wetland Protecting Ordinances, p. 207
- 3. Water Management Regulations, p. 208
 - 3.1 Water Management Permits, p. 208
 - 3.1.1 Piers, Docks and Boathouses, p. 208
 - 3.1.2 Dams, p. 209
 - 3.1.3 Other Water Regulation Laws, p. 209
 - 3.2 Wetland Regulations and Water Quality Standards, p. 209
 - 3.3 Erosion Control and Storm Water Management, p. 210
 - 3.4 Inland Lake Protection and Rehabilitation Districts, p. 211
- 4. Wastewater and Drinking Water Management, p. 212
 - 4.1 Sewer Service Area Plans, p. 212
 - 4.2 Wellhead Protection, p. 212
 - 4.3 Nonpoint Source Water Pollution Abatement, p. 213
 - 4.4 Clean Water Fund, p. 213
 - 4.5 Sanitary and Metropolitan Sewerage Districts, p. 214
- 5. Forest Lands Management, p. 215
 - 5.1 Forest Land Tax Programs, p. 215
 - 5.2 County Forest Master Plans, p. 215
- 6. Endangered and Threatened Species Management, p. 217
 - 6.1 Protection of Endangered and Threatened Species, p. 217
 - 6.2 Natural Areas Program, p. 217
- 7. Solid and Hazardous Waste Management, p. 219
 - 7.1 Solid Waste Management Planning, p. 219

Guide to Community Planning in Wisconsin

- 7.2 Contaminated Lands (“Brownfields”) Remediation, p. 219
 - 7.2.1 Brownfields Financial Assistance, p. 219
 - 7.2.2 Civil Protections, p. 220
- 7.3 Petroleum Environmental Cleanup Fund Award (PECFA), p. 220
- 8. Mining Regulations, p. 221
 - 8.1 Nonmetallic Mining, p. 221
 - 8.2 Metallic Mining, p. 221
 - 8.2.1 Local Zoning Approval of Mining, p. 222
- 9. State and National Riverways, p. 223
 - 9.1 Lower Wisconsin State Riverway, p. 223
 - 9.2 Lower St. Croix National Scenic Riverway, p. 223
- 10. Wisconsin Environmental Policy Act (WEPA), p. 224
- 11. Resource Materials, p. 226
- 12. Endnotes, p. 228

Chapter 11 Agriculture, p. 232

- 1. Farmland Preservation Planning, p. 233
 - 1.1 Background, p. 233
 - 1.1.1 Land Use Planning, p. 233
 - 1.1.2 Soil and Water Conservation, p. 233
 - 1.1.3 Tax Relief, p. 233
 - 1.2 Agricultural Preservation Planning, p. 234
 - 1.2.1 Policy Statements, p. 234
 - 1.2.2 Maps, p. 234
 - 1.2.3 Relationship to Other Plans, p. 235
 - 1.3 Data Analysis, p. 235
 - 1.3.1 Agricultural Data Sources, p. 236
 - 1.4 Intergovernmental Coordination and Public Participation, p. 238
 - 1.5 Plan Implementation, p. 238
 - 1.5.1 Exclusive Agricultural Zoning, p. 239
 - 1.5.1.1 Use Consistent with Agricultural Use, p. 239
 - 1.6 Soil and Water Conservation, p. 240
- 2. Other Programs, p. 241
 - 2.1 Land and Water Resource Management Planning, p. 241
 - 2.2 Agricultural Impact Statements, p. 241
 - 2.3 Drainage Districts, p. 241
 - 2.4 Local Regulation of Livestock Operations, p. 242
 - 2.5 Agricultural Shoreland Management Ordinances, p. 242
- 3. Resource Materials, p. 243
- 4. Endnotes, p. 244

Chapter 12 Housing, p. 246

- 1. Housing Assessment, p. 246
 - 1.1 Housing Supply, p. 246
 - 1.2 Housing Demand, p. 247

Guide to Community Planning in Wisconsin

- 1.3 Housing Policies for Future Life Cycle Needs, p. 248
2. Affordable Housing, p. 249
 - 2.1 Manufactured Housing, p. 251
3. Federal Fair Housing Act Amendments, p. 252
4. Resource Materials, p. 254
5. Endnotes, p. 255

Chapter 13 Economic Development, p. 256

1. Framework for Economic Development Planning, p. 257
 - 1.1 Migration of Firms, p. 258
 - 1.2 Changes in Size of Existing Firms, p. 259
 - 1.3 Births/Deaths of Firms, p. 260
 - 1.4 Location of Public Expenditures, p. 260
2. Organizing for Economic Development, p. 261
3. Endnotes, p. 262

Appendix 1, p. 263

Appendix 2, p. 274

Guide to Community Planning in Wisconsin

Preface & Acknowledgments

Across Wisconsin, issues related to community growth and change are the focus of debate in many local communities and state agencies. This book is meant to serve as both an educational tool and a reference work for people interested in better understanding the planning process and the complex legal framework for local planning in Wisconsin.

The book provides a comprehensive overview of the planning process, state statutes, and court cases related to land use. It also summarizes some of the state programs available to local governments engaged in community planning processes. It is not intended as the definitive treatise on land use law in Wisconsin. Rather, the book provides a blended overview of both the legal framework for planning and planning tools and devices.

Many years have passed since appearance of the last set of publications addressing planning law issues. In 1966, the Southeastern Wisconsin Regional Planning Commission published *Planning Law in Southeastern Wisconsin*, written by Professor Jacob H. Beuscher of the University of Wisconsin Law School. This work provided a brief overview of planning and plan implementation law in Wisconsin. A second edition was published in 1977. In 1967, the Institute of Continuing Legal Education for Wisconsin published *Zoning Law and Practice in Wisconsin*, written by Milwaukee attorney Richard W. Cutler. In 1979, the University of Wisconsin-Extension published the *Land Use Handbook* which also focused primarily on zoning. Richard A. Lehmann, then of the Department of Governmental Affairs for UWEX, was the principal author of that work. While the chapter on zoning in this book builds upon the important contributions of the *Handbook*, planning and land use law has substantially expanded since these earlier publications.

In light of the increasing complexity and breadth of community planning issues in Wisconsin, several people helped in the development of this book. Steven Ventura, Associate Professor, Environmental Studies and

Soil Science at UW-Madison, wrote the section on geographic information systems which appears in Chapter 4. Mary Edwards, Director of the Wisconsin Land Use Research Program at UW-Madison, wrote the section on fiscal impact studies which also appears in Chapter 4. The Wisconsin Land Use Research Program provided funding for Geoff Herbach, a former graduate student in the Department of Urban & Regional Planning at UW-Madison, who served as a project assistant for parts of this book. The Wisconsin Land Use Research Program is funded by the Wisconsin Agriculture and Natural Resources Consortium and the Wisconsin Food System Partnership, which is funded by the W.K. Kellogg Foundation.

Susan Fox, Bureau of the Environment, Department of Transportation, wrote most of Chapter 9 summarizing the state's various transportation programs related to local and regional planning. Dreux Watermolen, Land Use Team Leader, Department of Natural Resources, wrote Chapter 10 summarizing the Department of Natural Resource programs which impact local planning activities. Ronald Schaffer, Professor, Department of Agricultural and Applied Economics, Steven Deller, Associate Professor, Department of Agricultural and Applied Economics, and David Marcoullier, Assistant Professor, Department of Urban & Regional Planning, wrote Chapter 13 on Economic Development.

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Guide to Community Planning in Wisconsin

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All references to the *Wisconsin Statutes* are to the 1997-1998 edition. Land use law, like other areas of the law, is a complex and changing field. This book is not intended to be a substitute for legal advice.

Chapter 1

**INTRODUCTION TO COMMUNITY
PLANNING**

*“Would you tell me, please, which way I ought to go from here?”
asked Alice in Lewis Carroll’s Alice in Wonderland.*

*“That depends a good deal on where you want to get to,”
answered the Cheshire Cat.*

Chapter 1

1. Why Is Planning Important?

2. The Public Planning Process

Pre-Planning Process Activities

Citizen Participation

Approaches/Issue Identification

Suggested Process

3. Resource Materials

4. Endnotes

1. Why Is Planning Important?

The diehard planning enthusiast would lead people to believe that planning is a panacea for all the ills and troubles of the community. This is not so. Communities have existed and functioned in the past without official planning programs. With or without planning, communities will change.

Though planning is not necessary for communities to survive, communities that plan might fare better. Planning is a mark of good community sense.

Change in a community without planning

often happens in a haphazard fashion. Physical changes are the result of many uncoordinated decisions made by individuals.

Because the decisions are often made without concern for the relationship of one development to another, problems can occur. A developer might build a new subdivision in a part of the community that is improperly serviced by schools, streets or utilities. A sewer line might be extended to an agricultural area prompting speculators to purchase farmland and take it out of production, hurting the local economy.

Planning can provide a way to coordinate individual decisions so that the ensuing developments support, rather than detract from one another. Planning can also provide facts on existing conditions and trends and it can evaluate each project in light of community objectives. It can even propose alternative projects that might better serve community needs.

1.1 Planning and the Public Good

A decision to plan is a community commitment to consciously head in a certain direction. The path should lead to an increase in the public good. But what is the public good? The following types of benefits demonstrate what

Guide to Community Planning in Wisconsin

is meant by the public good, and how planning helps to increase it.

□ **Planning helps define the future character of communities by creating and maintaining a sense of place.** Planning for the physical design of new developments and the arrangement of land uses makes it possible for people to carry out their daily lives and activities in attractive and interactive community environments. Land use planning and design can foster a distinctive sense of place. By regulating the design and placement of new developments, planning helps a community preserve those features it feels are important and builds upon the features the community feels help to define it as a special place. Planning can also preserve historic community structures which help to create a sense of place. Good planning generates pride in the community. This pride can influence community development in many positive but intangible ways. Pride in community, in its sense of place, adds to the public good.

□ **Planning protects natural and agricultural resources.** Planning helps protect environmental features like wetlands and forests which provide important public services such as flood water storage, groundwater recharge, and oxygen, that would be difficult and expensive to replace if damaged. It can protect productive farmland, as well. Protecting natural and agricultural resources from inappropriate development protects the public good.

□ **Planning provides predictability regarding future development.** Good planning provides private landowners and developers with information about where and what type of development the community will allow. With good information, private actors can adequately assess the costs and benefits associated with selling or developing land in certain ways. Good planning also provides a standard process by which development proposals are accepted or rejected. This standardization increases the consistency and the fairness of the development process. Treating private actors fairly also serves to enhance the public good.

□ **Planning saves money.** As mentioned earlier, communities can save money by good planning. Not only can planning prevent the expenditure of public resources on unneeded facilities, it can help to organize new growth in more financially efficient ways. It is less expensive for a local community to provide public services to an orderly and phased pattern of development than it is to provide those services to scattered low density development. Saving money in an era of tight budgets serves the public good in several ways. Two are especially important. First, savings can be used to enhance public services. Second, municipal savings helps keep property taxes low.

□ **Planning promotes economic development.** Planning promotes economic development by helping the community keep existing businesses and attract new ones. By planning a community can attract businesses and help local entrepreneurs start businesses by keeping data on the workforce, the age and type of existing business, and the capacity of local services and infrastructure. This information can help insure that economic growth matches the needs and resources of the community.

Planning can also assist existing local businesses by helping them locate proper facilities, and by advising them on population and workforce issues. It can also prevent non-compatible land uses near existing businesses. Planning can result in cost effective land development and infrastructure which is essential to many economic development programs. Planning promotes the public good by helping to shape a sound economy.

□ **Planning can promote sustainable development.** “Sustainable development” has been defined as development designed “*to meet the needs of the present without compromising the ability of future generations to meet their own needs.*”¹ Planning is recognized as a critical action step towards more sustainable development. Planning to promote sustainability can help achieve more efficient use of land, decrease traffic congestion, conserve important natural resources, engage citizens, and provide for

Guide to Community Planning in Wisconsin

economic prosperity. By pursuing a sustainable pattern of development, planning helps promote the public good.

□ **Planning helps protect private property rights.** Good planning protects property values and minimizes the negative impacts of new development. Without proper planning, new land development can expose adjoining landowners to negative impacts and loss of land value. Even though property owners sometimes view land regulations, such as zoning, as an infringement upon their property rights, the purpose of such regulations is protect them. Protecting property rights is part of protecting the public good.

The reasons for planning are many. Rapid change in Wisconsin communities is causing an abundance of problems. For many communities, the question may no longer be “Why plan?” It may be, “Can we afford not to?”

Planning activities are undertaken by a wide variety of interests in both the public and private sectors. Private sector planning activity, for example, may take the form of various plans prepared by the developer of a new subdivision. A private non-profit conservation organization may also prepare plans for the protection of a watershed or other important natural resource.

Public sector planning involves a wide variety of governmental players. The federal government is actively involved in planning issues through the work of many federal agencies and the passage of numerous federal laws that affect the development process and the use of land. Many of the Indian tribes which exist as sovereign nations within Wisconsin are also engaged in various planning activities.

The Wisconsin Legislature has dispersed planning authority among various state agencies and among local governments. Other planning activities in Wisconsin are undertaken by regional planning commissions, and by hundreds of special purpose units of government such as school districts, housing authorities, sanitary districts, and metropolitan sewage districts. There is seldom any coordination among the planning activities of these various entities, and this poses a tremendous challenge to the planning process.

The recent creation of a “Wisconsin Land Council” by the Legislature may help address many of the problems associated with the dispersion of planning authority. A goal of planning processes should be to help coordinate the various planning activities that are undertaken by the federal, state, tribal, and local governments.

Although planning activities are undertaken by a wide variety of interests, the focus of this guide is on the planning activities of local governments in Wisconsin.

There are four types of local governments in the state--counties, cities, villages, and towns. Cities and villages are “incorporated” municipalities and possess general planning powers. Towns (often referred to as “townships”) exist in the “unincorporated” areas of the state and, along with counties, have planning authority for the unincorporated areas.

Local governments are created by the state and are referred to as “creatures of the state.”² The state, as a sovereign body, has three inherent general powers--the power to tax, the power of eminent domain, and police power. The power to regulate the use and development of land falls under the police power. The police power is a broad power which allows the public, through government, to regulate private activity to protect the health, safety and welfare of society--the public good.

The state delegates the police power to local government through statutory enactments of the Wisconsin Legislature, subject to the limitations placed on the Legislature by the Wisconsin Constitution.³ Statutory grants of authority to local governments may be general (as in the case of zoning and subdivision authorities) or specific (as in the case of impact fee authority). Local governments generally have more flexibility to act under general authority than under specific authority. The complex legal framework for planning is outlined in Chapter 2.

The local plan commission is often responsible for initiating a planning process. The commission might be responsible for preparing the plan itself, or it may work with the local planning staff or a hired consultant to prepare a plan (the plan commission is discussed in depth in Chapter 3).

Guide to Community Planning in Wisconsin

2. The Public Planning Process

A community that has decided to formally plan for its future has a number of decisions to make about how it will pursue planning. The purpose of this section is to detail the planning process.

2.1 Preparing for the Planning Process

Local communities in Wisconsin often differ a great deal from one another not only in size, but in terms of the issues that drive their planning processes. Rural communities may need to plan for the protection of agricultural or natural areas, for instance, while urban communities may need to plan for the revitalization of blighted neighborhoods. It is therefore inappropriate to develop a “one-size-fits-all” approach to planning.

An important beginning point in the planning process is to lay the groundwork for a process that fits the community. This can be called preparing a “plan for planning.” Creating a plan for planning makes the transition into the actual plan creation stage much easier.

Given the time and effort required to prepare a plan, it is easy to think of completing and officially adopting a plan as an end in itself. However, a plan is really a means to an end. A plan is to be used as a guide for decision making. There is little value in having a plan if it is not referred to when zoning changes are requested, when capital improvement priorities are being established, and when other actions are being considered that affect patterns of land use and development.

Unfortunately, citizens and local officials often overlook the fact that simply preparing a plan in no way assures that it will be used.

Often local citizens and plan

commissioners work hard to make sure that a plan is prepared and then see it ignored and fall into disuse. And, it is not only old plans that fall into disuse. Indeed, having a recently prepared plan is no assurance that a plan will be implemented. Spending one to three years, and a substantial amount of money, preparing a plan that does not meet a community’s needs and that is not implemented, is the worst of all possible outcomes--worse than having no plan at all.

One reason that communities are often disappointed in the plans they produce is that they rush into preparing one, without spending adequate time thinking about why they need a plan, what it should consist of, who should be involved in the planning process, and what

process to follow in preparing the plan. Preparing a plan for planning can help make the planning activities of the community more useful and effective. The following pages describe some common sense tips to developing a sound plan for planning.⁴ The section is organized to focus on broad concerns at the start, and narrower process concerns towards the end.

Steps in the Planning Process

1. Prepare a plan for planning.
2. Involve citizens in all steps of the process.
3. Identify the issues facing the community in order to select an approach to planning.
4. Collect and analyze data.
5. Define community goals and objectives.
6. Evaluate alternatives.
7. Develop and adopt the plan.
8. Implement the plan.
9. Continually evaluate the effectiveness of the plan and update as necessary.

2.1.1 Think About the Geographic Area Planning Should Cover

Many local plans include maps that seem to suggest that the community that is being planned for is a world unto itself, unconnected to other communities. Only one community is shown, and everything beyond its borders is blank. Of course, the vast majority of local governments in Wisconsin are not islands in a physical sense. In fact, developments and land use changes beyond a community’s boundaries can have a significant effect on what happens within that community. Therefore, it is important that local governments not feel compelled to limit the scope of planning to rigidly defined local government boundaries. Communities need to have a regional

Guide to Community Planning in Wisconsin

context for planning.

2.1.2 Explore the Possibility of Cooperative Planning

Land use planning in Wisconsin should include some efforts at inter-governmental cooperation. There are thousands of local governments in Wisconsin--72 counties, 189 cities, 395 villages and 1266 towns, 426 school districts and hundreds of special districts for soil and water conservation, sanitary or sewage treatment, lake management, and housing and community development. Most local governments in Wisconsin are extremely small, both in terms of population and land area. Two-thirds of all villages and towns in Wisconsin had populations of less than 1000 in 1990--including 12 which had populations of less than 100.⁵ When communities are that small, individual local governments have a difficult time coming up with the resources to support a comprehensive planning process.

Even if it were possible for all local governments in Wisconsin to prepare their own plans, whether such plans would improve land use or growth management is questionable. Local governments need to cooperate with one another to produce plans that are more consistent and compatible with one another.

The fact that a large proportion of new development is happening on the urban and rural fringe has greatly increased the potential for inter-governmental conflict over land use and development. When development occurs along the boundaries of communities, the effects of development are inevitably felt in adjoining communities. Moreover, when development occurs on the fringe of communities, it is often not wholly under the control of any single local government unit. Inter-governmental conflict can be aggravated by a lack of communication in these situations.

A more neighborly and probably more effective approach is for incorporated municipalities (cities and villages) and adjoining towns to cooperate with one another in land use planning. Varying degrees of inter-governmental cooperation in land use planning are possible. A town and village or city might agree to undertake parallel planning processes--to share information,

findings and proposed recommendations with each other, and to solicit comments from one another prior to taking any formal actions.

At the other end of the spectrum, a town and village or city might hire the same planning consultant, and/or combine "land in-between." The implementation of such a jointly prepared plan could be assured by signing an intergovernmental agreement defining a 10-year and/or 20-year growth boundary for the urban area.

The idea of jointly hiring a consultant to prepare a plan or compatible plans for two or more adjoining communities runs counter to normal practice, and may require additional effort. To succeed, communities will need to rise above parochial concerns and interests, and consider the interests and concerns of neighboring communities.

The advantage of a cooperative planning process is that it may enable adjoining local governments to avoid costly litigation arising from land use disputes. Cooperative land use planning may also cost less than if each local government were to hire its own consultant to prepare its own separate plan. Joint planning can achieve economies because once the consultant is in the area (to collect information, coordinate meetings, etc.), it costs relatively little to serve another nearby community as well. Moreover, the data collected for one community may be equally informative to an adjacent community because the growth and market pressures affecting adjacent communities are often quite similar.

Cooperative planning makes particularly good sense in cases where an incorporated village or city is completely surrounded by a single town. Cooperative planning can also make sense for groups of towns.

2.1.3 Budgeting for the Planning Process

Planning efforts cost time and money. In many communities, proposed planning programs are assigned a low priority in the allocation of staff and other resources. Proper budgeting is a necessity for the planning process. Having a plan for the planning process allows communities to budget appropriately for a successful planning process. Communities need to budget money not

Guide to Community Planning in Wisconsin

only for the preparation of a plan but also for the ongoing administration of the plan.

2.1.4 Consider Whether You Need an Altogether New Plan

Plans can become out-of-date. When citizens and local officials discover that their plan has inadequacies and shortcomings, they often assume that they need to start all over and develop a new one.

One problem with preparing a new plan is that it can distract a community from addressing pressing problems and issues, and provide an excuse for not implementing policies and programs recommended in previously prepared plans. Elected officials might want to avoid making difficult and controversial decisions, and may find it appealing to call for a lengthy planning process, or a study, as a substitute for action. Politically, calling for the preparation of a new plan may be easier, and less controversial, than revising and implementing a current one.

Some parts of the community's current or old plan may be as valid today as when it was first prepared. All that may be needed may be to update certain portions of the old plan. Perhaps, instead of spending money to prepare a new plan, a better use of limited resources might be to hire a planner who could then be made responsible for administering and gradually updating the plan.

Preparing an inventory of previous plans prepared for the community and examining what those plans say is an important early step in the process. People who have invested time and effort in preparing a plan are unlikely to be willing to work on developing another one if the old plan was not used by local decision-makers. Building on past plans is essential to maintaining support for future efforts.

2.1.5 Consider Who Should Prepare the Plan

Some communities may find that they are capable of preparing a useful and effective plan on their own, using the knowledge and expertise of members of the local plan commission and interested citizens.

If a community has a planning department, the community's own staff may be able to prepare part or all of the plan. Existing

planning staff can certainly be called upon to organize and oversee the overall planning process. However, the planning staff is also responsible for administering and enforcing existing land use regulations, and may find it difficult to wear that hat and at the same time propose a different set of land use regulations.

Most communities need or want to have professional assistance in preparing their plan. One reason is that an outside consultant is likely to see things and reach conclusions that might not occur to local residents and staff. People who have lived in a community most of their lives do not see their community the way outsiders see and experience it. An outside consultant will also be in a position to offer recommendations that local officials and residents might not feel comfortable suggesting.

If the community decides to seek outside assistance in developing a plan, it will still have a number of choices to make. If the county has a county planning department, the community might obtain technical assistance there. If the community is in a region served by a regional planning commission, it may be able to contract with it. The University of Wisconsin-Extension is also a source of outside assistance. Or, the community can hire any of a number of private consulting firms with qualifications in land use and comprehensive planning.

2.1.6 Prepare a Request for Proposals

If the community intends to hire outside professional assistance to prepare the plan, before hiring someone, it should first issue a Request for Proposals (RFP), advertise it prominently, and give consultants an adequate amount of time to prepare their submissions. Once the community has received the proposals and reviewed them, it can interview a handful of finalists, and then make the choice.

Needless to say, it is essential that an RFP process be completely open, and that there not be any bias in favor of a particular firm or applicant going into the selection process. To minimize favoritism, the RFP should clearly describe the process whereby the consultant will be selected, who will make the selection, the criteria for making the selection, and the time-line for making

Guide to Community Planning in Wisconsin

a decision.

One advantage of preparing an RFP is that it forces the community to explain clearly to everyone (including citizens and local officials) why it wants a plan, what it wants the plan to achieve, and the process it intends to follow in preparing the plan. A second advantage is that submissions in response to the RFP provide insights, observations and suggested approaches that enable the community to better understand its problems. As a result, a community that goes through an RFP process becomes smarter and wiser, and is better prepared to detail the services that meet its objectives, avoiding problems and pitfalls along the way.

Preparing a request for proposals is a good idea even if in the end the community decides to contract with a regional planning commission or county planning department. Public planning agencies as well as private consulting firms can be asked to submit a formal response to an RFP--and going through such a process can be equally beneficial to a public agency by forcing it to explain its ideas and its recommended approach before embarking on a lengthy planning process.

2.1.7 Think About Who is Going to Use the Plan, and How

How does the community hope and expect the plan to be used? Are local officials generally committed to referring to the plan when making decisions related to zoning and subdivision regulations, transportation and highway investments, public and community facilities improvements, park and open space acquisition and improvements?

Who, if anyone, will be responsible for thoroughly knowing the plan, and for seeing to it that policies and actions called for in the plan are carried out? This issue is especially important to consider in communities without a full-time professional planning staff.

2.1.8 Think About the Form and Appearance of the Plan

It is often assumed that there is such a thing as a standard plan, and that everyone knows and agrees what it will look like and consist of.

However, plans come in all sizes and shapes. Plans can be attractive, appealing to the eye and easy to read. Or they can be dull and take a great deal of effort to read.

One thing the community might consider is preparing a colorful and eye-catching "poster plan" to accompany the plan. A "poster plan" is not a substitute for a full plan, or the plan itself, but summarizes and communicates the key elements of the plan, and is prepared for wide distribution.

Poster plans are usually two-sided documents. On one side of the poster is a statement of the community's vision for the future, plus a list of key policies related to issues such as neighborhood development, historic preservation, downtown revitalization, intergovernmental relations, and transportation. On the other side of the poster, one finds a colorful map of existing and proposed land uses, with the goals and objectives of the plan related to land use, transportation, utilities, parks and open space and community image listed beneath the map.

The point is that the plan needs to communicate. The goal of any plan is to have an impact on how the community develops. A dull, technical document may never be picked up and used. An easy to understand, user-friendly document is less likely to gather dust and, perhaps be more likely to positively impact the community.

All of these issues should be considered before the community begins its planning process. Once they are dealt with, it is time to dive into the actual process.

The next section outlines basic elements of any planning process.

2.2 Elements of the Planning Process

Those engaging in a new planning process should understand two things. First, there is no one exact way to plan. Second, the planning process is not linear. The process is a series of interrelated steps which together result in the plan. Each successive step builds on previously completed ones. But, feedback considerations may require going through portions of some steps

Guide to Community Planning in Wisconsin

several times and making adjustments in others.

Although communities differ and no single way to plan exists, there are, nonetheless, several established planning techniques that are informative for all communities just beginning to plan or just beginning a new round. These techniques can guide a community through what may seem like a difficult and complex process with relative ease.

The following discussion briefly explores some of these techniques. It includes: ideas for citizen participation; selecting an approach to planning; collecting and analyzing data; defining community goals and objectives; evaluating alternatives; developing and adopting the plan; and implementing and evaluating the plan.

2.2.1 Involving Citizens

A central component to the planning process is the identification of issues. Why is the community interested in planning? What is the planning process supposed to accomplish? The issues identified will be an important factor in the community choosing its planning approach. Citizen input is a sound way in which a community can begin to identify the issues that need to be addressed in the plan.

It is important to confront the issue of citizen participation and involvement early for two main reasons. First, providing numerous opportunities for citizen involvement in the planning process is essential if the plan is to gain widespread public support. Second, providing ample opportunities for citizen input can add to the cost and length of the planning process, and therefore needs to be taken into account before entering into a contract for planning services.

Enlisting the aid of citizens may bring new and important information to the attention of policy makers and provide a different perspective to the planning process. In addition, many citizens have valuable skills to contribute to the planning process.

If citizens can see that their input was considered in the formulation of plans, opposition can be minimized. Participation gives citizens pride of authorship and the knowledge that local priorities and concerns have been addressed.

For these reasons, providing opportunities

for citizen involvement and comments is important at all stages of the planning process--not just at the end when preliminary and final plans and recommendations are being presented.

Although citizen participation adds to the expense of producing a plan, there are ways that local governments can limit the costs associated with it--such as by asking county-based, UW-Extension faculty to facilitate the citizen participation process, by making use of donated in-kind services, and/or by seeking the assistance of volunteers.

There are several ways in which communities can engage their citizens in discussions about planning. A number of citizen participation techniques are detailed below. Each technique has advantages and disadvantages. The techniques are not prioritized. Decisions on the proper technique will be driven by the level of financial commitment to involving citizens and by the planning approach that is to be used as a framework for the process. It will be important to use a variety of techniques. Some techniques may be more appropriate for one part of the planning process than for another.

2.2.1.1 The General Survey

A community-wide survey can be an excellent way to gather information and attitudes from citizens. Surveys are not good methods for generating involvement in the process after the information is gathered, however. For this reason, surveying should be combined with other methods that better maximize participation.

2.2.1.2 The Consensus Model

This technique compares the survey responses of community leaders, elected officials and citizens to see where there is community-wide agreement. The method has the same draw backs as the general survey technique.

2.2.1.3 An "Open House"

This is a community or consultant sponsored event in which the public is invited to review alternative development scenarios or other products of the planning process. It is generally used to get citizen response to the development and/or planning alternatives. It is inexpensive but

Guide to Community Planning in Wisconsin

not as interactive as other approaches.

2.2.1.4 Key Community Contact Interviews

This approach uses informal interviews to get information from citizens about how they view policy issues. Each interview is an individual expression which should not be generalized to the entire community unless enough people are interviewed so that trends emerge. The citizen participation potential of this approach is good if enough people are interviewed.

2.2.1.5 The Focus Group

Focus groups are small groups (seven to eight people) of like background brought together and interviewed in a non-threatening environment to allow them to give perceptions and different points of view. Members can influence each other by responding to comments, a more effective process than will occur in surveys or key informant interviews. Focus groups can be used at all stages of a project. They work best to uncover information on perceptions, feelings and opinions. Limitations include the difficulty of scheduling the groups and analyzing the data that is obtained.

2.2.1.6 Nominal Group Process

Nominal groups are widely used as a means of identifying and prioritizing concerns, goals, or community issues. It works best with groups of eight to twelve people. Quiet brainstorming places peer pressure on others to enlarge their list of concerns about a predetermined question. There is less interaction between respondents than occurs in focus group interviews, but all participants have an equal voice.

2.2.1.7 The Futures Workshop or Retreat

Usually, a fairly large group (25 to 40 people) of diverse community residents are brought together for a day or longer to work on an issue. Futures workshops typically review the community's history, detail the community's present situation, and determine action plans for the community's future. A variety of group processes may be used during the futures workshop. A futures workshop allows for good

citizen participation and a great deal of interaction.

2.2.1.8 The Citizens' Advisory Committee

These committees meet over a period of time to assist planners with specific issues. Such committees can gather information, make recommendations and communicate planning items to a broader group of citizens. The community should plan in advance as to what it expects from such a committee. Key questions are as follows:

What organizations should be represented? What individuals will be able to provide valuable contributions? What different interest groups should participate? How well will the potential committee work together and with planning staff? Citizens' advisory committees are an inexpensive way to involve citizens, and to produce information useful to the planning process.

2.2.1.9 Simulation Games

Computer models and photographic imaging can be used to engage citizens by showing how an area may look after it is developed. However, those methods can be expensive. Other less expensive simulation techniques may involve placing and moving colored dots on a map of the community to help understand different development scenarios. Another approach is to have citizens take photographs of those features which depict what is important for community identity and which features detract from a community sense of place.

2.2.1.10 Design Charettes

Design charettes involve an intensive effort over a short period of time (a day or a week) to develop design-related solutions to particular issues. These efforts need to be facilitated by an experienced design-oriented individual. Because of the intensity of this process, it is not a good vehicle for broad citizen participation.

2.2.1.11 Guided Tours

Tours of community areas that illustrate the planning issues driving the planning process are an important way to educate local officials and

Guide to Community Planning in Wisconsin

citizens about those issues. Successful tours can be difficult to organize. They are most effective early in the planning process.

2.2.1.12 Newsletters and Informational Meetings

Newsletters and informational meetings are an important way to keep citizens informed about the progress of the planning process. A continuous flow of information is crucial for a successful planning process. However, newsletters can be costly to produce.

2.2.1.13 Encourage Citizens by Celebrating Successes

Finally, citizens should be encouraged to get involved by celebrating successes and giving recognition. People are more likely to invest time and effort in planning if they know that past plans have been used and that past planning efforts have produced positive results.

It is easy to overlook the positive effects plans have on communities. Successes due to planning often go unrecognized because the success of a plan is often measured in the things that do not happen, and in problems that do not get worse. Successes also go unrecognized because the benefits of having a plan are often reflected in small and steady improvements, rather than in dramatic leaps forward. People should be aware of how development has been made better by planning, and of how land use has been improved by zoning and subdivision regulations that are consistent with the plan. A simple certificate or awards program is one of many low-cost ways that a community can celebrate success and build support for on-going planning processes.

2.2.1.14 Understanding the Realities of Citizen Participation

Citizen participation slows down the planning process. It requires more work to involve the public and requires additional work to meet requests for information, assistance and substantiation of conclusions. It means communications not solely with people who know something about planning, but also with people

who are not as aware of the issues. All of this adds to the expense of the planning process.

Apathy is probable, as well. In all likelihood, there will not be a groundswell of public interest in the task of creating a new plan. Planning often receives little attention because issues are long-term as opposed to immediate.

Citizen consensus is hard to come by. There are very few subjects on which the general citizenry ever has a consensus opinion. This can become a major pitfall if a community is severely divided. Large numbers of participants can come away from input meetings with the feeling that they were not listened to.

Finally, special interests may try to dominate. Special interests in the community are organized and understand the stakes in long-range planning. Such groups often see to it that they are involved in influencing the planning process. Special interest groups are, of course, entitled and encouraged to participate. Their point of view should be heard. They should not, however, be allowed to dominate the process.

Having a plan for engaging citizenry that fits the community's character and budget will help acknowledge the above issues and ensure effective citizen involvement.

2.2.2 Planning Approaches/Issue Identification

There are a number of different approaches to the planning process. They differ depending upon the issues the community seeks to address. They also call for different levels of professional expertise and citizen participation.

Five Approaches to the Planning Process

1. The Blank Slate Approach
2. The Problem-Oriented Approach
3. The Strategic Issues Approach
4. The Blue-Sky Approach
5. The Asset- Based Planning Approach

2.2.2.1 The Blank Slate Approach-- Planning as a Learning Process

One way of thinking about planning is to

Guide to Community Planning in Wisconsin

think of it as a learning process through which the community learns as much as possible about what is happening in the community and why.

Community members also discover what might be done to influence future changes. In this approach, a primary goal is to collect as much data and information as possible, and to develop an understanding of a comprehensive range of substantive issues and topics. Collecting data and information, and thinking about what that data means, is in fact a good way of deciding what the problems and issues are that need to be address.

This way of characterizing planning comes fairly close to the way that local governments, regional planning commissions and planning consultants often approach the planning process. Indeed, the first step in the rational, technical approach to planning-- and the first part of many plans-- is typically devoted to the compilation and analysis of data.

This approach to planning can be thought of as the "blank slate" approach. In this approach, planners, citizens and elected officials approach the planning process with open minds-- with few if any preconceived ideas as to what the most serious problems and issues are, and few preconceived notions as to what the causes of those problems might be. Instead, planning model assumes that an important reason why citizens and elected officials undertake planning is to discover and define what is a problem and what is not.

This way of thinking about planning has considerable merit. Communities that have not engaged in planning often misunderstand the problems they face, and often make the mistake of attacking "problems" that are simply symptoms of much larger and more complex problems that go ignored.

Thinking of planning as a learning process has important implications in terms of how a community approaches planning. Specifically, it means that, throughout the process, the community needs to remain open to new information. Conclusions reached in earlier stages need continually to be reassessed in the light of new information as it becomes available. Early in the planning process the community will have identified certain issues and problems as of primary concern. However, additional data and

information obtained later in the process may make those issues and problems seem less important.

2.2.2.2 The Problem-Oriented Approach

The model of planning on a "blank slate", is often held up as the ideal way to approach planning. Nevertheless, in real life, communities rarely embark on the preparation of a plan with an entirely blank-slate. Nor is it often the case that people simply decide "out of the blue" to prepare a plan. Planning is hard work. It takes time and energy, and costs money. As a result, when communities embark on preparing a plan, they usually do so for a reason.

Often, planning is prompted by the recognition that a serious problem exists that needs to be addressed. Similarly, planning is often precipitated by a sense of crisis, and/or by dissatisfaction with current conditions and/or trends. People may feel that development is out of control-- that too much development is occurring too fast and too much farmland and open space is being lost. Or the spark that prompts a community to feel that it needs a plan may arise from a major development proposal that promises to have a significant impact on a community.

When planning is prompted by a problem or crisis, the focus of planning, not surprisingly, is typically on solving that particular problem. Using planning as a way of solving current problems can be effective in mobilizing community support for the planning process. The disadvantage of the problem-oriented approach is that it is purely reactive, and restricts the planning process to a relatively narrow band of problems and issues. Another limitation is that the solutions produced may deal with the symptoms of the problem, but do not treat the deeper root causes in a way that could achieve a more lasting solution.

A problem-oriented approach to planning has one other shortcoming. Beginning the planning process by identifying problems and deficiencies is a fundamentally negative way of approaching planning. It focuses attention on what is wrong with a community, rather than on what is right and good.

Guide to Community Planning in Wisconsin

2.2.2.3 The Strategic Issues Approach

A third way of approaching planning is to drop the comprehensive approach, instead focusing on identifying strategic issues. This approach to planning, which originated in the private sector and has been increasingly applied in the public sector, is frequently referred to as strategic planning. What distinguishes this approach is its selectivity and its pragmatism. It restricts the number and range of issues dealt with at any single point in time-- and focuses attention and energy on issues and concerns which are most strategically important and timely.

Strategic issues are typically identified by conducting an analysis aimed at identifying Strengths, Weaknesses, Opportunities and Threats (S.W.O.T). First, the community or organization looks at its own Strengths and Weaknesses. For example, what image does the community project to outsiders and visitors-- is it positive or negative? What is the community's competitive advantage (or disadvantage) relative to other communities in the region?

Second, the community or organization examines the external environment with an eye toward identifying potential Opportunities and Threats. An important strength of this examination of the external environment is that it consciously attempts to identify and capitalize upon changing circumstances.

Taken together, this examination of internal Strengths and Weaknesses, and external Opportunities and Threats, provides the basis for a community or organization to concentrate its limited resources on issues not only of greatest interest and concern, but also on issues most likely to be positively affected. A strategic issues approach is highly pragmatic, in that it seeks to maximize positive results.

A major strength of the strategic issues approach to planning is that it keeps the community from being pulled in different directions and, serves to maximize effectiveness and the attainment of specific objectives.

The disadvantage of this approach is that it may ignore issues and concerns that many people consider important and feel should be addressed in some way. Also, this approach to planning can tend to be less inclusive, less open to

broad public participation. Strategic planning directed at the identification of strategic issues is most easily conducted in an organizational context in which there is a relatively high level of agreement on the organization's mission. Focusing on strategic issues is less easily achieved when there is less agreement on goals and mission, and when citizens and groups in communities are inclined to want to pursue multiple objectives.

2.2.2.4 The Blue-Sky Approach-- Visioning

A fourth way of identifying planning issues and of beginning the planning process is to formulate a vision of an ideal future, unconstrained by current conditions. This is basically the "Blue-Sky" approach to planning. Under this approach, citizens engage in a creative "visioning process" through which they attempt to produce mental images and rich verbal descriptions of what they would ideally like their community to be. Formulation of this "vision" then sets the basic framework that defines the issues that the planning process seeks to address.

Vision-oriented planning can be effective when there is general agreement about what makes a community special, and about what the community should look like in the future. It can also work well in settings and communities where citizens are not afraid of change, where citizens are receptive to new ideas, and where there is a climate of respect for expression of divergent views.

2.2.2.5 The Asset-Based Planning Approach

The fifth way of identifying issues and beginning the planning process is to identify the assets and qualities that make a particular place special and unique. For example, communities undertaking an asset-based approach to planning begin by asking: "What features and natural resources distinguish this community and should be preserved? What makes this community a good place to live and work?"

An asset-based approach to planning is a positive approach to planning and issue identification. It assumes that one of the most important purposes of planning is to protect and reinforce what is good about communities, while

Guide to Community Planning in Wisconsin

avoiding the needless destruction of valued and irreplaceable resources.

To pursue an asset-based approach to planning, a community ideally undertakes a comprehensive inventory of local assets, resources, qualities and features. In addition to objectively identifying and listing physical features and natural resources, an inventory of the positive assets and resources should include subjective and less visible assets that are valued by people in the community, but that may not be discernible to outsiders. Indeed, most of the data and information compiled in an inventory of environmental resources and assets will be directly relevant to the preparation of a plan.

It is important to note that the individual approaches presented here need not be pursued in a pure form, to the exclusion of all others. In fact, in pursuing community based planning processes, it is quite legitimate and appropriate to employ a mixture of these approaches, and/or to employ different approaches at different points in time. The secret to effective and successful planning is to design the planning process to fit local circumstances.

2.2.3 Data Collection and Analysis

Most of the planning approaches discussed above start with the present. An essential component of the planning process is therefore collecting data about the current status of the community and analyzing that data.

The data collected will depend upon (a) the type of plan being prepared; (b) the specific issues or problems being addressed by the plan; and (c) the type of community doing the plan. Generally, the data collected will examine the services and infrastructure provided by the community (roads, sewer, water, schools, libraries, police, fire); the natural features of the community (existing uses of land, floodplains, wetlands, ground water supplies, surface water and watersheds, soils, vegetation); demographic information (current population by age, sex and race, population projections--10 years, 20 years, number of households, employment trends, labor force estimates); economic resources (tax base information, types of industries in the community).

The above information can be obtained from a number of sources such as various local government offices, state agencies, the federal government, and the University of Wisconsin-Extension. A list of information sources is included in Appendix 1. The information may be presented in the form of a map, tables, or written text. The important information should be included in the plan as background information.

Analysis of the data collected should include answers to questions like: How many people, houses, and jobs will the community have 10 years from now? What are the capacities of the public facilities to handle future growth? What is the ability of the community to pay for future public facilities? What will be the impact of growth on important natural resources of the community?

Data collection and analysis may involve using sophisticated tools (e.g., satellite photography, computer analysis) or readily available local resources (e.g., opinion surveys, citizen task forces, general surveys). The studies and discussions that are part of the data collection and analysis step of the planning process have a value in their own right. The planning process need not always produce a final planning document.

Use of GIS, "geographic information system", technology can be very helpful. It combines a computer's capability to print maps with its capacity to organize and retain large amounts of data and quickly perform complex calculations. By efficiently integrating mapping with location-specific data, GIS users are able to generate maps and reports that use a community's own data to answer specific questions such as "Where are the undeveloped parcels that are within one-tenth of a mile of existing water supply and sewer lines?" This technology can help a community assess its current assets and deficits. It can be a very powerful tool in this step of the planning process.

It may also help to examine the development control techniques currently used by the community and assess how these techniques affect development decisions. This examination may also include an analysis of how and why past decisions affecting community development were

Guide to Community Planning in Wisconsin

made. Looking at present conditions, problems and opportunities, and analyzing their implications for the community helps to establish the reasons and rules for future decisions the plan must guide. This data provides the basis for positions taken in the plan.

2.2.4 Defining Community Goals and Objectives

Community goals (or vision) and objectives are detailed descriptions of how the community would like to be in the future.

Although establishing community goals and objectives may occur prior to or simultaneously with data collection and analysis, it is usually preferable to have the data collected before developing goals for the future.

Community goals and objectives must be defined by the community. For this reason, effective citizen participation is critical during this stage of plan development. The data and analysis should be used to inform and educate decision makers and citizens on the realistic opportunities and constraints affecting the future of the community.

Questions should be asked of the community. For instance, how does the community see itself now as well as in the future? What problems does it have to overcome? And, how can its opportunities and assets be exploited and enhanced?

Once formulated, the goals and objectives serve as a basis for designing community plans and programs. Community goals can be formulated by trained professionals or can

evolve from surveys or group discussions.

It is important, however, to note that citizen participation will not drive all of the goals and objectives. Many of them will be defined by the findings of the data collection and analysis stage. For example, the data collected may identify the need for more affordable housing. The ensuing analysis would discuss why having housing that is suitable for the different stages of a person's life cycle is central to helping foster a

sense of community.

Based on this, policies for a suitable range of housing types should be included in the plan. These policies would then help to guide decisions on residential development.

2.2.5 Evaluation of Alternatives

After defining the goals and objectives of the community, the next step is to develop and evaluate several alternative ways to achieve the goals and objectives. A variety of approaches to solving existing problems should also be considered. These alternatives and their predicted

impacts provide the community with options for both accommodating and instigating change.

Evaluation of the alternatives focuses on their physical and financial impact on the community and the prospects for developing strategies that could feasibly implement them. The evaluation should also be the focus of public review and discussion.

After examining the implications of each alternative, the next step is to select the one alternative that provides

Some Basic Planning Terms

1. Goals: The purpose or end that provides direction for community decisions.
2. Policy: Rules that guide the actions of the community.
3. Objectives: Specific, attainable, and measurable statements of the actions the community will take to carry out a plan.

An Example of the Relationship of a "Goal" to "Policy"

Goal

Ensure that existing and future land use developments maintain or improve the environment in a high quality manner, such that all citizens may share the social, economic, aesthetic, and physical benefits of the region.

Policies

1. Encourage coordinated, effective, energy efficient, and aesthetic land use development in a growth centered format where new growth is funneled into and adjacent to existing developments.
2. Provide ample land and facilities for the economic and residential growth of the region in order to maintain and improve, where needed, the economic and physical well being of our citizens.

Guide to Community Planning in Wisconsin

the best combination of creating positive future conditions and solving current problems. Often the alternative selected may be a combination of the various alternatives examined.

2.2.6 Plan Development

After the goals and objectives have been established and alternative approaches to solving the community's issues have been explored, policies and programs are developed. Planning involves more than just coloring a map or filling up vacant areas with uses. Policies and programs need to be articulated that will be a meaningful guide to local decision making. Plans should therefore include written text and tables summarizing the reasons supporting those policies and programs. The plan document may also contain maps and other graphics which depict existing conditions and the future objectives of the community.

The plan document should relate to the land's physical characteristics. For example, wetlands serve several important functions such as water storage, especially during times of flooding, and wildlife habitat. If wetlands are filled and built upon, structures could be damaged during flooding and/or flooding stage could be increased elsewhere. Groundwater recharge areas can be extremely vulnerable to development. If the groundwater becomes contaminated, the community can face serious and expensive water supply issues. The plan and implementing tools should therefore discourage certain development in these areas.

Other essential considerations in preparing the plan document include the public facility needs of future land uses and housing concerns. Indeed, local regulations can have a significant impact on the cost of housing in the community. Inadequate supplies of affordable housing can affect the community's work force as well as the ability of the community to meet the life cycle needs of its residents.

2.2.7 Plan Adoption

Upon completion of the planning document, the plan must be adopted by the appropriate governmental unit. Adoption of the plan must follow the statutory requirements.

These often depend on the type of plan prepared by the community. The requirements are outlined in Chapter 2.

2.2.8 Implementation: Using the Plan for Continuing Decisions

Once a plan is adopted, **no decisions** related to development, public facility development and budgeting should be made without considering whether the decisions are consistent with the plan. Implementation tools also need to be developed and adopted as outlined in the plan to ensure that the day-to-day decisions of the local government carry out the plan's goals. Plans that acknowledge the ways in which local decisions are made and which provide real guidance for local decision-making will be the most meaningful.

The most familiar implementation tools are zoning, subdivision regulations, sanitary codes, official maps, and capital budget and improvement programming. A total community planning and development strategy may use all of these devices plus taxation and, acquisition measures, measures involving investment of public funds, service delivery policies, boundary agreements, etc.

Effective plans will guide decisions at three levels.

□ First, they will guide day-to-day decisions on things like development proposals, regulation changes and the ongoing financing of local facilities.

□ Second, they will guide major decisions such as building a new city hall or developing a five-year capital improvement program.

□ Third, they will guide decisions which involve comprehensive changes to a community's long-term development policy; for example, decisions about opening up land for development.

All three types of decisions go on at the same time. Good plans will provide a link between them so that decisions of one type can be understood in terms their affects on the others. For example, a rezoning decision could affect decisions on financing needed for new public facilities to serve the rezoned area.

Guide to Community Planning in Wisconsin

2.2.9 Maintaining Plan Effectiveness

Plans are not meant to be static documents. Monitoring and evaluating the effectiveness of the plan is a critical, yet often forgotten, step in the planning process. Communities need continually to reassess the relevance and meaning of the plan to ensure its effectiveness.

Plans need to be updated as situations change. It is important that mechanisms be built into the planning process so that existing plans can be altered to meet emerging challenges. At a minimum, communities should update plans every five to ten years.

2.3 **Attributes of an Effective Plan**

As a plan is prepared, it is important to consider its effectiveness. For plans to be effective they must be used. The following are some attributes that increase the likelihood that a plan will be relied upon to shape the future.⁶

2.3.1 An Effective Plan Presents Essential Data--But Not Too Much

The preparation of plans is an opportunity to collect useful information about communities, and their resources and qualities. This baseline information, once collected, can be extremely interesting. However, plans should not be padded with unnecessary data that is largely irrelevant to the substance of the plan. Some plans are so weighted down with so much data, and so many charts, tables, and lists that citizens and local officials find them too heavy to take home and read.

A plan needs to present data that communicates important facts and insights about the community and how it has been changing. Data should be presented in the plan only if it is informative and meaningful, and sheds light on important issues addressed in the plan.

The message here is not that you

shouldn't collect data, but rather that the plan should not be cluttered with unnecessary data that gets in the way of understanding what is really important. With careful editing, the thickness and weight of plans can be considerably reduced. Tables, charts and lists that are interesting but not directly referred to in the plan can just as well be placed in a separate appendix, rather than in the main body of the plan.

2.3.2 An Effective Plan Describes Alternative Futures, and the Consequences of Alternative Courses of Action

A good plan provides a glimpse of what the future may hold by describing different scenarios and possibilities. How might the community grow and change over time? What effects might these different outcomes have on quality of life, environmental quality, health and safety, equity and opportunity? An effective plan also identifies specific policies and actions that are likely to lead to these different future outcomes. In other words, if a community wishes to achieve a certain outcome, or avoid an undesirable outcome, what policies, programs, actions and/or regulations should it put into place?

The important thing that citizens and local officials come to appreciate by being exposed to these different scenarios is that no single outcome is predetermined or inevitable. Rather, the community's future will be determined in large measure by the actions and choices that citizens and local officials make now and in coming years.

Tips For Effective Planning

1. Involve citizens in the process
2. Link plan to implementation tools
3. Be realistic; do not oversell the plan
4. Periodically review and reassess
5. Measure progress in meeting objectives
6. Issue periodic progress reports
7. Celebrate successes

2.3.3 An Effective Plan Communicates Key Ideas Clearly and Effectively

An effective plan is able to present complicated ideas and concepts in a way that they can be readily understood and remembered. Communicating complex ideas in an orderly and discernible way is an art rather than a science. It requires strong writing and editing, and a creative sense of how best to organize and present ideas.

Guide to Community Planning in Wisconsin

2.3.4 A Good Plan Offers a Well-Thought-Out and Integrated Program of Action

An effective plan provides a community with an integrated program of recommended policies and actions that enables it to move steadily and deliberately toward the future it desires.

Communities that don't have plans, on the other hand, react to problems in an ad hoc fashion. The problem with such a "knee-jerk" reaction to problems is that in each instance it encourages a community to look for a "magic bullet" solution. The net result is a series of discrete and unrelated actions-- the very opposite of a coherent and sustained approach to problem-solving. Responding to crises and problems as they arise gives the appearance of "doing something," but rarely produces satisfactory results in the long run. Given the complexity and inter-relatedness of issues facing communities today, a comprehensive and deliberately formulated strategy offers a much greater likelihood of success.

2.3.5 An Effective Plan is Realistic and Achieves Positive Results

To be effective, a plan needs to present a compelling case that the strategies and actions it recommends are necessary and desirable. It must also convince citizens and elected officials that the strategies and actions it recommends have a good chance of achieving the desired results.

Effective plans are realistic plans. It makes little sense for a plan to call for actions for which there is no political support, and/or that the community can not afford. Likewise, there is considerable down-side risk in recommending actions that have a low probability of achieving a successful outcome.

2.3.6 An Effective Plan Explains the Process Used to Create the Plan

The plan should explain how the views and concerns of major stakeholder groups and persons directly affected by the plan were considered, and how the plan balances competing interests. If the legitimacy, representativeness, and fairness of the plan is not clearly established, opponents and critics of the plan could use that as an excuse to undermine its adoption and

implementation. The plan must include a brief section that explains how it was prepared, how the goals of the plan were arrived at, and who had input into the plan. It should also describe how the views and concerns of citizens were solicited and obtained (by mail or telephone survey, focus group discussions, meetings, representative task force or citizen advisory committee, etc.), and the opportunities provided for citizens to review and comment on drafts, findings, and recommendations in the plan.

All of the elements discussed above help to make the planning process run more smoothly. As mentioned earlier however, no perfect outline for the planning process exists. Ultimately, community involvement, physical attributes, financial resources, and stated objectives will help the planners shape the process into one that best fits the community.

Summary

This chapter has provided a rationale for planning and the planning process. The goal of the process section is to help communities make planning efficient and equitable. But, a plan that is not implemented is not worth having. The perfect process, filled with citizen participation, foresight and organization, and aimed at all the right issues, cannot change that.

Unfortunately, many communities find that their plans do little more than gather dust on a shelf. Often it is because they have forgotten to attach proper implementation tools to the plan. To avoid such a fate, communities should keep in mind the kinds of tools they will use to implement the plan while they are creating it in order to guide change in the community. The next chapter discusses some of the implementation tools that make the process meaningful.

Guide to Community Planning in Wisconsin

3. Resource Materials

The following publications and materials contain practical and useful information to guide in the preparation of a successful plan, as well as in structuring and carrying out planning processes leading to the preparation or revision of a plan.

LAND USE POLICY

Crabgrass Frontier: The Suburbanization of the United States, by Kenneth T. Jackson (Oxford University Press, 1985).

Land Use in America: The Report of the Sustainable Use of Land Project, by Henry L. Diamond and Patrick F. Noonan (Island Press, Washington, D.C., 1996).

Tomorrow by Design: A Regional Process for Sustainability, by Philip H. Lewis, Jr. (John Wiley & Sons, 1996).

GENERAL PLANNING

Guidelines for Preparing Urban Plans, by Larz T. Anderson (American Planning Association Planners Press, 1995.)

Planning Made Easy, by William Toner, Efraim Gil and Enid Jucchesi (American Planning Association Planners Press, 1994).

Neighborhood-Based Planning, by Wendelyn A. Martz (American Planning Association Planning Advisory Service Report Number 455, 1995).

The Small Town Planning Handbook (Second Edition), by Thomas Daniels, John Keller and Mark Lapping (American Planning Association Planners Press, 1995).

HIRING A PLANNING CONSULTANT

Selecting and Retaining a Planning Consultant, by Eric Damian Kelly (American Planning Association Planning Advisory Service Report Number 443, 1993).

How to Oversee Consultant Spending, (Project Management Publications, 1995).

How to Negotiate with Consultants, (Project Management Publications, 1990).

CITIZEN PARTICIPATION

The Activist's Handbook: A Primer for the 1990s and Beyond, by Randy Shaw (University of California Press, 1996).

Collaborative Leadership: How Citizens and Civic Leaders Can Make a Difference, by David D. Chrislip and Carl E. Larson (Jossey-Bass, 1994).

Everyone Wins! by Richard D. Klein (American Planning Association Planners Press, 1990).

Participation Tools for Better Land Use Planning, by C. Nicholas Moore. (Center for Livable Communities, 1995).

Guide to Community Planning in Wisconsin

4. Endnotes

1. The World Commission on Environment and Development (The Brundtland Commission), **Our Common Future** (Oxford University Press, 1987), p. 43, as acknowledged by The President's Council on Sustainable Development in **Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future** (Government Printing Office, 1996), p. iv.
2. *Dane County v. Health and Social Services Dept.*, 79 Wis. 2d 323, 329, 255 N.W.2d 539 (1977) (counties); *Schroeder v. City of Clintonville*, 90 Wis. 2d 457, 280 N.W.2d 166 (1979) (cities); *Haug v. Wallace Lake Sanitary Dist.*, 130 Wis. 2d 347, 387 N.W.2d 133 (Ct. App. 1986) (towns).
3. Cities and villages also have authority which comes from the Home Rule Amendment to the Wisconsin Constitution, art. XI, § 3(1). The amendment states:

“Cities and villages organized pursuant to state law may determine their local affairs in government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or village. The method of such determination shall be prescribed by the legislature.”

See also Wis. Stat. § 61.34(5) and Wis. Stat. § 62.11(5).
4. These tips are drawn from **To Produce an Effective Plan You Need a Plan for Planning**, by Gene Bunnell, Department of Urban and Regional Planning, University of Wisconsin-Madison, Extension Report 97-2 (1997).
5. Susan C. Paddock, “The Changing World of Wisconsin Local Government,” in **Wisconsin Blue Book 1997-1998** (Wisconsin Legislative Reference Bureau).
6. These attributes are based on **Attributes of Effective Plans**, by Gene Bunnell, Department of Urban and Regional Planning, University of Wisconsin-Madison, Extension Report 97-3 (1997).

Chapter 2

TYPES OF PLANS & OVERVIEW OF IMPLEMENTATION TOOLS

Chapter 2

- 1. Types of Plans**
 - Master Plans**
 - County Development Plans**
 - Comprehensive Plans**
 - Other Types of Plans**
- 2. Implementation Tools**
 - Zoning**
 - Subdivision Regulation**
 - Official Map**
 - Codes, Ordinances, and Review**
- 3. The Takings Issue**
- 4. Endnotes**

1. Types of Plans

There are many different types of plans, and the variety of plans can be a source of confusion to local officials and citizens. Citizens may begin to wonder why a community prepares a stormwater management plan one year, a sewer service area plan the next year, and then prepares a master plan the following year.

When a community prepares a plan, it is important that the community understand what type of plan it is, its purpose, and how the plan relates to other plans or planning activities in the community. Communities need to provide the framework to coordinate the various planning

Plans reflect community values. Those values become law through the zoning ordinance and other tools.

activities in a meaningful way so the sum of those planning activities can create a meaningful guide to the future of the community.

The Wisconsin Legislature authorizes local governments to prepare a variety of plans. The authorization for these is generally found in what are known as “enabling laws.” Planning enabling laws are the basic mechanism through which the state delegates its inherent authority to local government to plan for and regulate the use of land. However, not all types of planning activity depend upon specific statutory enabling authority. For example, special area plans, site plans, and strategic plans are not dependent upon specific enabling legislation. Rather, these planning activities are undertaken as reasonable and necessary functions of local government.

Wisconsin’s planning enabling laws have been developed in a piecemeal fashion over the years, creating a fairly complex set of antiquated laws with little uniformity. As a result of these various laws, the planning document which is ultimately prepared can go by a variety of different names. The plans prepared may be called a “master plan,” a “land use plan,” or a “development plan.” [As explained later, a “land use plan” is technically one element of a master plan or a development plan.] The procedural requirements for preparing and adopting certain

plans also vary.

Given the array of different plans that a local government may undertake, it is important to

Guide to Community Planning in Wisconsin

understand the legal framework within which plan preparation, adoption, and implementation must be carried out. Many of the types of plans prepared by local government are discussed below. A good starting point for coordinating the various plans and other activities that impact the operation of local government is the development of a municipal master plan or county development plan that provides a comprehensive look at the community.

1.1 Master Plans

Cities, villages, and towns that have adopted village powers, may prepare a **master plan**.¹ The Wisconsin statutes governing the master plan, adopted by the Legislature in 1941, are based upon a model law entitled the *Standard City Planning Enabling Act* published by the United States Department of Commerce in 1928.

The statutes authorize municipalities to create by ordinance a plan commission which is responsible for developing and adopting the master plan.² The plan commission is largely a mixed blend of municipal officials and citizens.³ Plan commissions are authorized to employ experts and staff to aid in the work of the plan commission.⁴

The master plan is a compilation of maps, charts and descriptive materials intended to guide the future physical development of the community. The master plan shows the plan commission's recommendations for such things as:

the general location, character and extent of streets, highways, freeways, street grades, roadways, walks, bridges, viaducts, parking areas, tunnels, public places and areas, parks, parkways, playgrounds, sites for

*public buildings and structures, airports, pierhead and bulkhead lines, waterways, routes for railroads and buses, historic districts, and the general location and extent of sewers, water conduits and other public utilities whether privately or publicly owned, the acceptance, widening, narrowing, extension, relocation, removal, vacation, abandonment or change of buildings, properties, utilities, routes or terminals, the general location, character and extent of community centers and neighborhood units, the general character, extent and layout of the replanning of blighted districts and slum areas, and a comprehensive zoning plan.*⁵

A Menu of Plans

General Community Plans

- Master Plan
- County Development Plan
- Comprehensive Plan
- Regional Master Plan

Functional Plans

- Transportation Plan
- Sewer Service Area Plan
- Cooperative Plan
- Agricultural Preservation Plan
- Erosion Control Plan
- Forest Land Use Plan
- Park System Plan
- Public Facilities Needs

Assessment

Special Plans

- Tax Increment Financing Plans
- Strategic Plans
- Special Area Plans
- Site Plans

Master plans may cover the entire geographic jurisdiction of cities, villages, and towns with village powers. Portions of the plan may only cover specific areas of a community, such as a central

business district. The Wisconsin statutes also provide that master plans may include any areas outside of a municipality's boundaries which in the plan commission's judgment "bear relation to the development of the municipality provided, however, that in any county where a regional planning department has been established, areas outside the boundaries of a municipality may not be included in the master plan without the consent of the county board of supervisors."⁶

The master plan can therefore cover as much territory outside the city or village as is deemed necessary for the development of the city or village. However, the extraterritorial reach of cities and villages for common plan implementation tools, such as zoning and subdivision regulation, is limited to within three miles of the corporate limits of a first, second or third class city or 1½ miles of a fourth class city or village. A park board's extraterritorial planning jurisdiction⁷ is limited to the city's extraterritorial plat approval jurisdiction.

Guide to Community Planning in Wisconsin

The reference to a county “regional planning department” dates back to when the Legislature adopted the standard state zoning enabling law in 1941. At that time, Milwaukee County had a “Regional Planning Department,” which is now defunct.

A regional planning commission is probably not a regional planning department. In counties with a county planning department, it may be advisable for a municipality to seek the county board of supervisors’ input on the inclusion of lands outside a municipality’s borders in a master plan, particularly if the county has any county-wide plans.

If a county maintains and operates parks, parkways, playgrounds, bathing beaches and other recreational facilities within the limits of a community, that community cannot include those facilities in the master plan without the approval of the county board of supervisors.⁸

The statutes do not require that the plan commission hold a public hearing on a proposed master plan. This is one of many areas where the statutes do not support good planning practices. Nevertheless, many communities do hold a public hearing on the proposed master plan and encourage broad citizen participation in the preparation of the plan. Citizen participation is often critical to public acceptance and support of the plan.

The plan commission adopts the plan by resolution. The resolution must refer to the various text and maps which accompany the master plan. A majority vote is needed. The plan commission must then certify the plan to the governing body of the community (the city council, village board, town board).⁹ The statutes do not require that the governing body formally adopt the master plan. However, in many communities the governing body will adopt the plan to provide greater political support for it.

The statutes authorize a plan commission to adopt the master plan as a whole or in parts

over time.¹⁰ This often results in communities preparing plans for just a few aspects of community development. The various parts or elements of a master plan are sometimes

considered functional plans. These functional plans may be called a **land use plan**, a **parks and open space plan**, or a **transportation plan**. The statutes require that the parts “correspond generally” with the other parts of the plan.¹¹ It is important that

communities try to coordinate these various functional plans to identify the relationships between the various plans and to ensure the eventual development of a complete master plan.

Another element of the master plan is the **comprehensive zoning plan**. Based on 1920s planning practices, the comprehensive zoning plan was a detailed zoning plan for the community based on technical reports and analysis related to growth within the community. The comprehensive zoning plan may take the form of a comprehensive zoning ordinance which is ultimately adopted by the governing body of the community.

Comprehensive zoning ordinances are “comprehensive” in that they apply to the entire community and include standards for many facets of development, not just, for example, building height limitations.

The zoning enabling law for cities, villages, and towns with village powers states that zoning regulations “shall be made in accordance with a comprehensive plan.”¹² The Wisconsin Supreme Court has interpreted this requirement to mean that the comprehensive zoning ordinance is the comprehensive plan. According to the Court, the statutes do not require the preparation of a separate document called a “comprehensive plan” prior to the enactment of a zoning ordinance.¹³ However, the courts have recognized that when a separate plan exists it can provide the basis for certain governmental actions, such as denying a rezoning.¹⁴

Classes of Cities (Wis. Stat. § 62.05.)

First class cities have a population of at least 150,000 people.

Second class cities have a population of 39,000 to 150,000 people.

Third class cities have a population of 10,000 to 39,000 people.

Fourth class cities have a population of less than 10,000 people.

Guide to Community Planning in Wisconsin

The statutes provide that "[t]he purpose and effect of the adoption and certifying of the master plan or part thereof shall be solely to aid the city plan commission and the council in the performance of their duties."¹⁵ Under the statutes, a master plan is therefore only intended to be advisory and not a legally binding document.

However, a recent decision by the Wisconsin Supreme Court adds some legal teeth to master plans. In *Lake City Corp. v. City of Mequon*,¹⁶ the court held that a municipality may rely solely on a master plan as the basis for rejecting a subdivision plat even if the section of the master plan relied on by the municipality conflicts with the provisions of the zoning ordinance as applied to a particular property. The *Lake City* case clarified a provision in Wisconsin's statutes for subdividing land which authorized local communities to condition the approval of preliminary or final subdivision plats upon compliance with a local master plan.¹⁷ The *Lake City* case elevates the importance of master plans for achieving a community's objectives. The case also provides a reason to have the elected governing bodies of local communities adopt the master plan to show their approval of the work of the appointed plan commissions.

An additional note about towns. . .

Towns located in counties which have not adopted a county zoning ordinance have limited planning powers which they can exercise without the adoption of village powers through a town zoning committee.¹⁸ While the town zoning committee has no express general land use planning powers, the committee does have the authority to do the necessary planning to prepare a report from which the town board may adopt a zoning ordinance.¹⁹

1.2 County Development Plans

In 1967, the Wisconsin Legislature provided counties with the specific authority to plan for the physical development of the county. The plan document prepared by the county is referred to in the Wisconsin statutes as the **county**

development plan. The statutes provide that the "county zoning agency shall direct" the preparation of the plan.²⁰ The county zoning agency is either a planning and zoning committee of the county board or a planning and zoning commission which is made up wholly or partially of people who are not members of the county board. The county board creates the county zoning agency.²¹

If a county with a county executive creates a planning and zoning commission, the county executive appoints the commission members subject to confirmation by the county board.²²

The statutes indicate that the county development plan is intended to cover "the physical development of the unincorporated territory [towns] within the county" and areas within cities and villages "whose governing bodies by resolution agree to having their areas included in the county's development plan."²³ Absent the agreement of a city or village to be included in the county development plan, the statutes require that the development plan "shall include the master plan, if any, of any city or village . . . and the official map, if any," of cities or villages in the county "without change."²⁴ The mandate to include city and village master plans and official maps without change does not apply to master plans and official maps prepared by towns with village powers. The statutes do not provide any guidance as to how counties should incorporate master plans prepared by towns with village powers.

City or village master plans and official maps which include the unincorporated areas around the city or village "shall control in unincorporated territory in a county affected thereby, whether or not such action occurs prior to the adoption of a development plan."²⁵ If there is a conflict between a city or village master plan and the county development plan, the master plan will control even if the master plan is adopted after the adoption of the county development plan.

In addition to the requirement to include the master plans and official maps of cities and villages, county development plans may include:

Comprehensive surveys, studies and

Guide to Community Planning in Wisconsin

*analyses of the history, existing land use, population and population density, economy, soil characteristics, forest cover, wetland and floodplain conditions and other human and natural features of the county.*²⁶

Based on these surveys, studies and analyses:

*[T]he plan may identify goals and objectives for the future physical development of the county with respect to: public and private use of land and other natural resources; highways including bridges, viaducts, parkways and other public ways; parks, playgrounds, hunting and fishing grounds, forests and other facilities of a recreational nature; public buildings and institutions including schools; sanitary and storm sewers, drainage and measures for disposal of refuse and waste; reducing and preventing stream and lake pollution; flood control; public and private utilities including water, light, heat, transportation, pipelines and other services; industrial and commercial sites; historic districts; and other factors which will improve the economic situation of the county.*²⁷

The county zoning agency may employ, or contract for, professional planning technicians and staff to assist in the preparation of the county development plan.²⁸ The county development plan may be in the form of descriptive materials, reports, charts, diagrams, or maps.²⁹

The county zoning agency must hold a public hearing on the development plan before approving it. After approving the development plan, the county zoning agency must submit the plan to the county board for approval and

adoption. The plan must be adopted by resolution.³⁰

The county development plan may be adopted as a whole or in parts, such as a county **land use plan**.³¹ Whether or not the county development plan is adopted as a whole or in parts, the Wisconsin statutes require that “[e]ach element of the development plan shall describe its relationship to other elements of the plan and to statements of goals, objectives, principles, policies or standards.”³² It is therefore important that counties coordinate the various elements which may comprise the county development plan.

Once adopted, certified copies of the plan

need to be sent to the clerks of all cities, villages, and towns affected by the plan.³³

According to the statutes, the county development plan is intended to “serve as a guide for public and private actions and decisions to assure the development of public and private property in appropriate relationships.”³⁴ The

zoning enabling law for counties does not provide that the actual zoning of land use should implement the county development plan. The

county zoning enabling law predates the development plan enabling law. Nonetheless, the law requires that zoning ordinances must be reasonably based.³⁵ A county development plan can help provide that basis.

Terminology for Laws

The Wisconsin Legislature considers proposals for new laws called “**bills**.” If a bill passes the legislature and is signed by the governor, it is called an “**act**.” The acts are integrated with existing laws and published, or “codified,” as **statutes**.

Sometimes the statutes provide general guidance to state administrative agencies, such as the Department of Natural Resources, to develop “**administrative rules**” which are more detailed regulations that help the administrative agencies implement the requirements of the statute.

Local governments pass laws to regulate how land is zoned and subdivided, among other things. These local regulations are referred to as “**ordinances**.”

1.3 Comprehensive Plans

Many cities, villages and towns refer to their master plans as “comprehensive plans.” Some counties also refer to their county development plans as “comprehensive plans.” While the Wisconsin Statutes do not provide a definition of a “comprehensive plan” or any

Guide to Community Planning in Wisconsin

guidance for its preparation, it is important for communities to follow good planning practices and make their plans, be they master plans, land use plans, or county development plans, as comprehensive as possible.

The theory and practice of planning is constantly evolving. In the 1940s, for example, a comprehensive zoning ordinance was considered the same as a comprehensive plan. The plan was implicit in the regulatory process. Rarely did a separate plan exist that articulated the public objectives of the regulatory process. Today, a comprehensive plan is generally understood to be a document separate from the zoning ordinance. Also, historically, master plans tended to be focused only on the physical development of the community. Today, comprehensive plans often include the social and economic components of community development.

The following is intended to provide guidance regarding the comprehensive package planning can provide, no matter what the plan document is called.

What a Comprehensive Plan Does

Comprehensive planning provides an assessment of a community's needs; a statement of a community's values; the community's long-term goals and objectives as well as measurable steps which can be taken to achieve one or more goals. The plans are *comprehensive* in that the various components encompass many of the functions that make a community work such as wastewater treatment, transportation, housing, and land use. The plans should also consider the interrelationships of those functions and help coordinate the various plans, programs, and procedures of a community.

The comprehensive plan is usually the only public document that describes the community as a whole in terms of its complex and mutually supporting systems. Implementation of the comprehensive plan must be linked to the local budget, cooperation with other units of government, and the needs and capabilities of the private sector.

While the comprehensive plan serves as a

blueprint for the community's physical development, the plan must also attempt to clarify the relationship between physical development policies and social and economic goals. The plan provides a long-term perspective to guide short-term community decisions such as how much capacity to build into a new wastewater treatment plant or how to evaluate the potential impacts of rezoning a parcel of land. A comprehensive plan is also not a static document. It needs to be continually updated as conditions change.

A comprehensive plan outlines actions a community should take and gives guidance for making both simple and complex decisions. The plan-making process involves preparing materials to support decisions. The decision-making process involves making choices based on the plan.

The format of a comprehensive plan includes various parts directed at specific substantive areas. The parts may include text, maps, charts and other features. Comprehensive plans are policy-oriented. The plans therefore include a series of "policy statements" which reflect the problems and opportunities provided by the community's resource base, the physical and social needs of the community, and the community's goals.

Specific components a comprehensive plan may cover the following:

- A **population** element that outlines historic demographic trends and projections such as the number and size of households and income characteristics.
- An **economic development** element that may include labor force information and an analysis of the community's economic base.
- A **housing** element that considers such issues as the location, types, age and condition of housing, owner and rental occupancy, and the affordability of housing.
- A **natural resources** element that considers issues relating to soil types, wetlands, agricultural and forest lands, habitat areas, water resources and other environmental features.
- A **community facilities** element that addresses

Guide to Community Planning in Wisconsin

the existing and future transportation, sewer and water systems.

A **land use** element that considers existing and future land use within the community and attempts to minimize use conflicts; designates lands for protection; and ensures that sufficient space is allocated for different uses.

An **intergovernmental coordination** element that describes how a community relates to surrounding communities and promotes coordination with school districts and neighboring communities.

An **historic preservation** element identifying manmade resources.

A **community design** element that focuses on the aesthetic character of a community.

A **redevelopment** element that may explore strategies for addressing the reuse of land and/or facilities and reinvestment.

A **implementation** section that outlines the steps needed to implement, monitor and update the plan.

Every community may not need to include all these elements. Each plan must reflect the unique circumstances of the community.

Although they may be developed separately, each component should reflect the fact that the parts of the plan are inter related. For example, decisions made regarding new streets and roads will have an impact on future land use patterns, which will have an impact on proposed commercial and recreational developments and so on.

1.4 Regional Master Plans

The *Wisconsin Statutes* provide for the creation of regional planning commissions.³⁶ The regional planning commissions “*may make plans for the physical, social and economic development of the region, and may adopt by resolution any plan or the portion of any plan so prepared as its official recommendation for the development of the region.*”³⁷ Specifically, the regional planning commission can prepare a master plan for the region that shows the commission's recommendations for the physical

development of a region's transportation system, parks and open space system, airports, sewers, water, and other public and private utilities, as well as areas for industrial, commercial, residential, and agricultural or recreational development. The master plan may be adopted in whole or in parts and is advisory only.³⁸ Any local unit of government may adopt all or any portion of the regional master plan.³⁹

1.5 Other Types of Plans

The Wisconsin Legislature also authorizes local governments to prepare a number of different types of plans. Additional planning activities may also occur as the result of laws passed by the federal government. Other planning activities occur without any type of express statutory enabling authority. The key to a successful planning process is understanding exactly what type of plan a community is preparing and how that plan relates to other existing plans or future planning activities.

The following is a brief summary of some of the other types of plans and the statutory authority for undertaking those plans.

1.5.1 Metropolitan Transportation Plans

Certain planning activities are undertaken in response to requirements of the federal government. The federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21) require certain transportation planning processes in urbanized areas of more than 50,000 people.⁴⁰ These transportation planning activities are undertaken by metropolitan planning organizations (MPOs). MPOs may be a regional planning commission, such as the Southeastern Wisconsin Regional Planning Commission and the Dane County Regional Planning Commission. In some cases, a city or county planning department serves as the MPO, such as with the City of LaCrosse. Certain transportation improvements must be made consistent with these plans.

Guide to Community Planning in Wisconsin

1.5.2 Sewer Service Area Plans

Sewer service area planning is a water pollution control planning process required by the Federal Clean Water Act and administered by the Wisconsin Department of Natural Resources under Chapter NR 121 of the Wisconsin Administrative Code. This requires every community with sanitary sewer service within designated water quality planning areas (Southeastern Wisconsin, Dane County, and the Fox Valley) and other communities with populations larger than 10,000, to develop 20-year plans to guide sewered development and prevent water pollution associated with such development.

Currently over 250 cities, villages and towns have sewer service area plans. The plans are prepared by a regional planning commission or a local planning authority. The Wisconsin Department of Natural Resources approves the final plan. Once approved, new development must occur within the planned sewer service area. The plans also designate environmentally sensitive areas where sewered development will not occur.

1.5.3 Cooperative Plan for Boundary Changes.⁴¹

Cooperative boundary agreements are a relatively new tool available to cities, villages and towns as an alternative to the traditional annexation processes. A plan is required as part of the agreement. Among other things, the plan must include a land use plan for the area covered by the plan, a schedule and description of municipal boundary changes and freezes, a description of how municipal services will be provided to the lands included in the plan, a discussion of any significant adverse environmental consequences that may be caused by the proposed development of the lands included in the plan, and a description of how affordable housing needs would be met by the plan.

1.5.4 Agricultural Preservation Plans.⁴²

Counties prepare these plans for participation in the state's Farmland Preservation Program. At a minimum, the plans include statements of policy regarding the preservation of

agricultural lands, urban growth, the provision of public facilities and the protection of significant natural resource, open space, scenic, historic or architectural areas. The plans also include maps identifying agricultural areas to be preserved, areas of special environmental, natural resource or open space significance and transition areas and an implementation program. The plans are required to include agricultural preservation plans adopted by municipalities. In addition, agricultural preservation plans are required to be a component of and consistent with any county development plan. Completed plans are reviewed and certified by the state Land and Water Conservation Board, which is attached to the state Department of Agriculture, Trade and Consumer Protection. Of Wisconsin's 72 counties, 70 have certified agricultural preservation plans.

1.5.5 County Land and Water Resource Management Plans⁴³

These plans replace the erosion control plans prepared by many counties. County land conservation committees are required to prepare county land and water resource management plans in an effort to conserve long-term soil productivity, protect the quality of related natural resources, enhance water quality, and focus on severe soil erosion problems. The plans must be submitted to the state Land and Water Conservation Board for review. The Department of Agriculture Trade and Consumer Protection is required to assist in the preparation of the plans, including providing grants for plan preparation.

1.5.6 County Forest Land Use Plans⁴⁴

The county forestry committee is required to prepare a county forest land use plan with the assistance of the Department of Natural Resources and other interested agencies. The plans are approved by the county board and the Department of Natural Resources.

1.5.7 County Park System Plans⁴⁵

These plans are prepared by the county park commission for a county park and parkways system within both the incorporated and unincorporated parts of the county.

Guide to Community Planning in Wisconsin

1.5.8 County Platting/Transportation Plans⁴⁶

These plans are prepared by the county planning agency for the future platting of lands in the unincorporated areas of the county or for the location of future streets, highways, or parkways and the extension or widening of existing streets and highways.

1.5.9 County Rural Planning⁴⁷

Any county which does not have a county park board or county park commission must have a rural planning committee to plan for the health, general welfare, and amenity issues; transportation facilities, community centers; county parks and fairgrounds; woodlands; historic sites; and for the reservation of land for public uses along lakes, rivers, and "fine outlooks from hilltops, and for the preservation of our native landscape."⁴⁸

1.5.10 County Solid Waste Management Plans⁴⁹

A solid waste management board established by a county board may develop a plan for the solid waste management system of the county.

1.5.11 Water Resource Related Planning

Land use activities can have a significant impact on the water quality of Wisconsin's lakes, rivers, and wetlands. The Wisconsin Department of Natural Resources administers a number of grant programs to fund local water-related planning activities and provides other types of planning assistance to local governments. These programs include shoreland protection,⁵⁰ and lake management and classification.⁵¹

1.5.12 Public Facilities Needs Assessment⁵²

A public facilities needs assessment is required for counties, cities, villages, and towns seeking to collect impact fees from developers to cover the capital costs of new development. The assessment inventories existing public facilities, identifies new facilities needed because of land development and provides an estimate of the costs for the new public facilities. A needs assessment could be developed in conjunction with a local capital improvements plan.

1.5.13 Tax Increment Financing Project Plans⁵³

Tax increment financing is a fiscal device available to cities and villages to stimulate redevelopment of blighted areas and promote industrial development. A project plan must be prepared by the plan commission or other appropriately designated planning authority for each tax increment district created.

1.5.14 Comprehensive Town Park System Plans

Towns have limited planning powers which may be exercised through a town park commission.⁵⁴ Town park commissions have the authority to prepare a comprehensive town park system plan which may include parks, parkways, boulevards or pleasure drives.⁵⁵

Other planning activities undertaken by the plan commission or another planning entity may involve urban redevelopment plans,⁵⁶ business improvement district plans,⁵⁷ and comprehensive redevelopment plans.⁵⁸

Some of the various planning activities that do not have specific enabling legislation are the following:

1.5.15 Strategic Plans

Some communities adopt a strategic planning approach borrowed from business planning concepts. Strategic planning is defined as a "disciplined effort to produce fundamental decisions and actions that shape and guide what an organization (or governmental unit) is, what it does, and why it does it."⁵⁹ The main difference between a strategic plan and a comprehensive plan is that the strategic plan focuses on a few selected issues and the specific steps taken to resolve the issues, while a comprehensive plan is broader in scope.

1.5.16 Special Area Plans

Unique problems or issues may require extra study and special attention. There could be a need for economic development or historic preservation. Perhaps the corridor into the city is unpleasant or there may be a need to locate a new school or library. A community might choose to

Guide to Community Planning in Wisconsin

develop a special area plan in response to such concerns. Examples of such plans include plans for a central business district, a riverside or waterfront, an industrial district, civic or cultural areas, or for a neighborhood.

1.5.17 Site Plans

A site plan is a map of a proposed development or subdivision. The plan usually is submitted as part of an application for a zoning change, variance, or conditional use permit. A community may also prepare a site plan for a new park or a small scale project. Site plans are also undertaken by communities as a way to shape new developments or encourage a certain style of land use.

1.5.18 Capital Improvement Plans

Capital improvement plans help a community match the costs of future capital improvements, for such things as roads, sewers, and public water systems, to anticipated revenues. A capital improvement plan can provide a vital link to other plans and insure that a community's spending priorities match the community's vision.

In light of the variety of planning activities that a community may undertake, it is important that the community explore the relationships that exist between these different planning activities and attempt to provide a comprehensive framework.

Guide to Community Planning in Wisconsin

2. Implementing the Plan

After a plan is completed, the next step is to implement it. The following section discusses a wide variety of implementation tools. A planning process can help identify the various tools best-suited to a community's plan. Effective planning will normally result in the community needing to use more than one tool. As communities use these tools, local decision makers and citizens need to continually ask: "Is the tool consistent with the plan?" Without coordination, certain community activities may be working at cross purposes with other activities.

2.1 Education

People in the community and decision makers need to know about the plan and understand the reasoning behind its objectives.

Community members, after all, are critical to the plan working correctly. Legitimacy for the plan should already have been gained by having appropriate citizen participation during the planning process. The second half comes after the plan has been written. This is education.

Education about the plan can come in many forms. As plans are discussed in public meetings, citizens who participated in the process could do a portion of the speaking. Using a citizens' advisory committee to design the community education phase is a good idea.

Finally, periodic meetings should be held to update the community on how the plan is working. This will help create a larger constituency for planning in the community, and may draw more citizen participation in the next round of planning.

2.2 Area or Other Special Plans

Preparing another plan can be a critical implementation tool. For example, a master planning process may raise the need to prepare neighborhood plans to address specific issues; a waterfront development plan; or a downtown revitalization plan, for instance. Similarly, implementing a lake management plan or a transportation plan may require the preparation of additional elements of a master plan.

2.3 Local Decision Making

The most effective plan implementation tool is for local decision makers to rely on the plan when making decisions. In fact, a number of important municipal decisions must be referred to the plan commission for consideration and a

report before final action is taken by the governing body.⁶⁰ These matters include:

- The location and architectural design of any public building
- The location of any statue or other memorial
- The location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for any street, alley or other public way, park, playground, airport, area for parking vehicles, or

other memorial or public grounds

- The location, extension, abandonment or authorization for any public utility whether publicly or privately owned
- All plats of lands in the community or within the territory over which the community has platting jurisdiction
- The location, character and extent or acquisition, leasing or sale of lands for public or semipublic housing, slum clearance, relief of congestion, or

Plan Implementation Tools

1. Education
2. Additional plans
3. Local decision making
4. Zoning
5. Subdivision regulation
6. Official map
7. Building, sanitary and housing codes
8. Aesthetic controls
9. Fiscal tools
10. Public acquisition
11. Annexation/incorporation
12. Cooperative boundary agreements
13. Intergovernmental agreements
14. Special purpose districts
15. Land trusts

Guide to Community Planning in Wisconsin

vacation camps for children

The amendment or repeal of any zoning or official map ordinance

As these matters are referred to the plan commission, it has a very important opportunity to comment on how these matters relate to master plan and to influence the outcome of these decisions.

2.4 Interim Control Ordinances

Starting a planning process often raises the need for communities to suspend new development for a brief period of time while studies are completed and plans and ordinances are prepared or revised. A temporary moratorium is a technique that can be used to provide this needed "time-out."

A temporary moratorium, also known as an interim control ordinance, can be an important planning tool. Many communities throughout Wisconsin have imposed moratoria on new development as they engage in planning processes to address issues of growth and change. These moratoria have taken various forms, including moratoria on rezonings, building permits, and subdivision plats.

2.4.1 The Function of Moratoria

There needs to be a legitimate planning justification for a moratorium. Moratoria allow planning to occur unhindered by developments that could frustrate the objectives of the process. Moratoria limit the number of nonconformities that could be created under the adoption of a new zoning ordinance. Finally, moratoria work to eliminate what is known as the "race of diligence"-instances where a property owner seeks building permits based on existing zoning *after* the nature of the proposed new zoning becomes known but *before* adoption of the new zoning. Faced with this "race," a community may hastily adopt a new permanent zoning ordinance without doing the necessary studies and receiving sufficient public input.⁶¹

2.4.2 Local Authority to Impose a Moratorium

Cities, villages and towns with village powers have express authority to freeze existing uses while the community prepares a comprehensive zoning plan. Section 62.23(7)(da) of the Wisconsin Statutes, entitled "Interim zoning," states:

"The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim zoning ordinance to preserve existing uses while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment."

This authorization, however, is rather narrow. It applies only to cities "which have not adopted a zoning ordinance."⁶² There is also express authority for adopting an interim zoning ordinance to preserve existing uses as part of the extraterritorial zoning process.⁶³ Moratoria have also been used in other contexts.

Counties also impose temporary moratoria as part of their planning processes. Counties, however, have no express statutory authorization to impose an interim control ordinance. The absence of express enabling authority does not mean that counties cannot impose moratoria. What it does mean is that the authority for counties to impose moratoria is not clear. (Some states have statutes which expressly prohibit moratoria for planning purposes. Wisconsin does not.)

The authority for a county to impose a moratorium must be derived from the general language of the land use enabling legislation for counties. There are no reported court cases in Wisconsin on the issue of county authority to impose a moratorium. There are cases in other states which have held that in the absence of express enabling legislation for moratoria, the general delegation of authority under the planning and zoning enabling legislation is sufficient authority to impose a moratorium.⁶⁴ However,

Guide to Community Planning in Wisconsin

there are cases in other states which have held the opposite.

2.4.3 "Helpful Hints"

When enacting a moratorium, communities should observe the following:

- Moratoria should be enacted by ordinance and not by a resolution.⁶⁵
- The purpose of the moratorium must be for conducting studies for the purposes of updating/amending plans or regulatory controls to prevent what may become incompatible uses after the plan/controls are adopted. There needs to be a rational planning base for what the community is doing.
- While a moratorium could apply to the entire community, it is best to focus the ordinance so it applies only to the area or areas where it is needed.
- The duration of the moratorium should be kept as short as possible. Set the length of time to no more than what is needed to complete the required task.
- The ordinance need not prohibit all development. The issuance of building permits for minor alterations or repairs of a structure could be allowed.
- Exceptions to meet particular local situations can be included. A broad variance or exception procedure may be necessary where, as a practical matter, a community has a number of developments well along the road to completion.

2.5 Zoning

Zoning is a major tool used to regulate land uses and implement plans. A zoning ordinance regulates the use of property to advance the public health, safety, and welfare. It has been used in the United States since the early part of the twentieth century. Some form of zoning ordinance exists in almost every municipality in the nation.

2.5.1 General Zoning

A zoning ordinance creates different use

zones or districts within a community. Each district has a list of permitted uses, which are uses that are desirable in a district. Each district may also contain a list of special uses, sometimes called special exceptions or conditional uses, which are allowed under certain circumstances, and require review by a local body in to be allowed. All other uses are prohibited.

Zoning regulations are adopted by local ordinance and consist of two elements--the map and the text. The zoning map displays where the zoning district boundaries are, and the text describes what can be done in each type of district.

The districts are based on different categories of uses. Within each category, there are often several levels of intensity of the use allowed. For instance, a residential one (R1) district might allow only single-family detached units, while residential two (R2) might allow both single-family and multi-family units. Typical zoning districts may include land zoned for residential use, commercial use, industrial use, government and institutional use, recreational use, conservancy, and agricultural uses.

Zoning has flexibility and adjustment devices that allow land use rules to be customized or varied for special problems or unique circumstances.

Cities and villages in Wisconsin have general zoning powers.⁶⁶ Counties are granted general zoning powers within the unincorporated areas (towns) of the county.⁶⁷ However, a general county zoning ordinance becomes effective only in those towns that approve the county ordinance. In counties that do not have a general county zoning ordinance, the town board may petition the county board to adopt a county ordinance. If the county board does not adopt a general county zoning ordinance, the town may adopt a general zoning ordinance.⁶⁸ (However, this authority is seldom used.) Towns in counties with a general zoning ordinance which have not adopted the county zoning ordinance may adopt village powers and use the city zoning enabling authority, subject to county board approval.

2.5.2 Special Types of Zoning

In addition to general zoning, there are also special types of zoning directed at protecting

Guide to Community Planning in Wisconsin

prime agricultural lands and sensitive environmental resources. These special types of zoning often follow different statutory and procedural requirements than general zoning.

2.5.2.1 Floodplain Zoning

Wisconsin law requires that cities, villages, and counties (in the unincorporated areas) adopt floodplain zoning ordinances.⁶⁹ The minimum standards which the local ordinances must meet are specified in rules developed by the Wisconsin Department of Natural Resources.⁷⁰ County floodplain zoning ordinances are not subject to town approval. Local ordinances can be more restrictive than these rules.

2.5.2.2 Shoreland Zoning

Wisconsin law requires that counties adopt zoning regulations within shoreland areas located in the unincorporated areas.⁷¹ Shoreland areas are those lands within 1,000 feet of a navigable lake, pond, or flowage, or 300 feet of a navigable stream or the landward side of the floodplain, whichever distance is greater. County shoreland zoning ordinances are not subject to town approval.

Wisconsin law also requires that cities and villages place wetlands of five acres or greater located within the shorelands in a conservancy zoning district. Minimum standards for shoreland/wetland zoning ordinances are specified in rules developed by the Wisconsin Department of Natural Resources.⁷² Local standards may be more restrictive than these rules.

2.5.2.3 Exclusive Agricultural Zoning

Cities, villages, towns and counties may adopt exclusive agricultural zoning for farmland under the Farmland Preservation Program. For farmers to be eligible for income tax credits, exclusive agricultural zoning ordinances must meet standards set forth in the statutes for the Farmland Preservation Program.⁷³ The standards require a minimum parcel size of 35 acres and limit the use of land to those that are agriculturally related. The ordinances must be consistent with the county farmland preservation plan. Farmers who participate in the program receive an income tax credit.

2.5.2.4 Extraterritorial Zoning

Any city or village that has a plan commission may exercise extraterritorial zoning power in the unincorporated areas surrounding the city or village.⁷⁴ The extraterritorial zoning power may be exercised in the unincorporated areas located within 3 miles of the corporate limits of a first, second, or third class city, or within 1½ miles of a fourth class city or village. Extraterritorial zoning may be initiated by a city or village adopting a resolution and providing notice of the extraterritorial area to be zoned. The city or village may unilaterally adopt an interim zoning ordinance to preserve existing zones or uses for up to two years while a comprehensive zoning plan is being prepared.⁷⁵ A joint committee, consisting of three city or village plan commission members and three town members must approve of the plan and regulations by majority vote.

2.6 Subdivision or Land Division Regulation

Subdivision regulation relates to the way in which land is divided and made ready for development. Communities can control the subdivision of land by requiring a developer to meet certain conditions in exchange for the privilege of recording a plat. While imposing conditions restricts the use of private property, the cumulative effect of land subdivision on the health, safety, and welfare of a community is so great as to justify public control of the process.

Of all the land use control devices available, subdivision regulation has probably the greatest potential. When compared with zoning, a well-administered subdivision control is more useful in achieving planning goals and its influence is far more lasting. Once land is divided into lots and streets are laid out, development patterns are set. Subdivision regulations can ensure that those development patterns are consistent with community standards. Subdivision regulations can also ensure the adequacy of existing and planned public facilities such as schools, wastewater treatment systems, water supply, to handle new growth. Finally, subdivision regulation can help ensure the creation

Guide to Community Planning in Wisconsin

and preservation of adequate land records.

There is room for overlap between zoning and subdivision codes in terms of standards. Both ordinances, for example, can set lot sizes. Both can deal with the suitability of land for development. Implementing important plan techniques such as **rural cluster development** often requires use of the zoning ordinance and the subdivision ordinance.⁷⁶

Wisconsin law allows any city, village, town, or county that has established a planning agency to adopt a land division ordinance.⁷⁷ At a minimum, local subdivision regulations must meet the State platting requirements specified in Chapter 236 of the Wisconsin Statutes. The laws authorizing local governments to regulate subdivisions are different from the laws authorizing local governments to zone land. County approval is not necessary for a town to have its own subdivision regulations. City and village subdivision regulations may also be applied to the unincorporated areas which fall within the extraterritorial plat approval jurisdiction of the city or village.⁷⁸

2.7 Official Maps

Cities, villages, and towns may adopt official maps.⁷⁹ These maps, adopted by ordinance or resolution, may show existing and planned streets, highways, historic districts, parkways, parks, playgrounds, railroad rights of way, waterways and public transit facilities. The map may include a waterway only if it is included in a comprehensive surface water drainage plan. No building permit may be issued to construct or enlarge any building within the limits of these mapped areas except pursuant to conditions identified in the law.

Counties have limited official mapping powers. Counties may adopt highway-width maps showing the location and width of proposed streets or highways and the widths of any existing streets or highways which are planned to be expanded.⁸⁰ The municipality affected by the street or highway must approve the map. Counties may also prepare plans for the future platting of lands, or for the future location of streets, highways, or parkways in the

unincorporated areas of the county.⁸¹ These plans do not apply to the extraterritorial plat approval jurisdiction of a city or village unless the city or village consents.

Official maps are not used frequently because few communities plan anything but major thoroughfares and parks in detail in advance of the imminent development of a neighborhood.

2.8 Building, Housing, and Sanitary Codes, and Private Sewage System Ordinances

Counties as well as cities, villages, and towns may enact building and sanitary codes.⁸² Building codes are sets of regulations that set standards for the construction of buildings in a community. Building codes ensure that new and altered will be safe. These codes must conform to the state building, plumbing, and electrical codes.⁸³ All counties, except Milwaukee, are required to enact private sewage system ordinances.⁸⁴ These ordinances must conform to the state plumbing code and apply to all towns, villages and cities located in the county.

Housing codes define standards for how a dwelling unit is to be used and maintained after it is built. This code is concerned with keeping housing from falling into dilapidation and thus keeping neighborhoods from falling into blight.

2.9 Aesthetic Controls

2.9.1 Sign Ordinances

A sign ordinance restricts the type, size, and location of signs within a community. It also often restricts the types of materials that can be used to construct signs. These ordinances can regulate signage to achieve a number of community values. Counties, towns, cities, and villages may all adopt sign ordinances and billboard regulations.⁸⁵

2.9.2 Historic Preservation Ordinances

The objectives of community plans which note the need to preserve important historic structures and sites can be implemented through the adoption of a historic preservation ordinance. These ordinances are meant to protect historic

Guide to Community Planning in Wisconsin

buildings and districts. Counties, towns, cities and villages have express authority to enact historic preservation ordinances.⁸⁶ In addition, the Wisconsin Legislature has determined that historic preservation is such an important objective that all cities and villages that contain any property listed on either the national register of historic places or the state register of historic places must enact an historic preservation ordinance to regulate historic or archeological landmarks and historic districts in an effort to preserve those landmarks.

2.9.3 Design Review

Design review involves the review and regulation of the design of buildings and their sites.⁸⁷ Design review is often included as part of zoning and subdivision ordinances. It seeks to protect communities from development which would detract from the appearance of the community and reduce property values. Such an ordinance is especially recommended for communities with buildings of historic or architectural importance and where tourism is a major economic activity.

2.10 Fiscal Tools

2.10.1 Capital Improvements Program

The capital improvements program⁸⁸ is a way of implementing issues related to capital facilities specified in a plan. Capital improvements are those projects which require the expenditure of public funds for the acquisition, construction, or replacement of various public buildings such as police and fire halls, schools, and city/village/town halls; roads and highways; water and sewer facilities; and parks and open space.

A capital improvements program is a listing of proposed public projects according to a schedule of priorities over the next few years, usually a four-to six-year programming period. The program allows local communities to plan for capital expenditures and minimize unplanned expenses. Sources of funding for capital improvements include impact fees, subdivision requirements, special assessments, and revenue or general obligation bonding.

The usefulness of the capital

improvement *program* depends upon the community properly budgeting for expenditures as part of the community's annual capital improvements *budget*. The capital improvement program should be updated annually.

Capital improvement programming and staging can have a substantial effect on land values and the pattern of growth and development.

2.10.2 Impact Fees

Cities, villages, towns, and counties may impose impact fees.⁸⁹ Impact fees are financial contributions imposed on developers by a local government as a condition of development approval.

Impact fees are one response to the growing funding gap in infrastructure dollars between revenues and needs. Impact fees help shift a portion of the capital cost burden of new development to developers in an effort to make new development responsible for serving itself rather than raising taxes on existing development. Local governments can use impact fees to finance highways and other transportation facilities, sewage treatment facilities, storm and surface water handling facilities, water facilities, parks and other recreational facilities, solid waste and recycling facilities, fire and police facilities, emergency medical facilities, and libraries. Impact fees cannot be used to fund school facilities. Counties cannot use impact fees to fund highways and other transportation related facilities.

2.10.3 Use-value Assessment

Starting in 1996, assessed values on farmland were reduced to its "use" value.⁹⁰ This is to take ten years. Under the legislation, all agricultural land is to be assessed at use value, regardless of zoning or market sales of land. Landowners who sell their land after owning the land for less than five years will be required to pay a penalty to the Wisconsin Department of Revenue. While the new program may be expected to provide substantial property-tax relief to all owners of farmland, it will do so without attaching any significant restrictions to the land.

Guide to Community Planning in Wisconsin

2.10.4 Tax Increment Financing (TIF)

Cities and villages may designate tax increment finance districts to finance public improvements through the property taxes generated on subsequent increases in the value of taxable property in the district.⁹¹ TIF distributes the costs of public improvements among all overlying taxing jurisdictions that ultimately benefit from an increase in the area's valuation. Often the cost of financing public improvements for development is borne entirely by the community. Although overlying jurisdictions such as county, school or vocational and technical college districts may benefit from the development in the form of an increase in property valuation, they do not share in the costs of providing the necessary public improvements that make the development possible. Under TIF, the overlying taxing jurisdictions do not receive any tax revenues based on the increase in property valuation in an area or district until all improvement costs are paid. Thus TIF assures that all taxing jurisdictions benefitting from development pay a share of the costs.

2.11 Public Acquisition Programs

Public acquisition of land for parks, natural areas, resource protection, and other public facilities has long been one of the most successful plan implementation tools. In addition to a community purchasing land in an open market transaction, accepting a donation of land, or requiring the dedication of land as part of a subdivision process, there are a variety of other public acquisition techniques.

2.11.1 Eminent Domain

Important plan objectives may best be accomplished by public acquisition of property, including the acquisition of land for a public park or a road. Often, the acquisition of the land can be accomplished voluntarily. Communities also have the right to acquire property through the power of eminent domain. The power of eminent domain is provided for in Article IX, section 3, of the Wisconsin Constitution. It allows government to take private land for public purposes, even if the owner does not consent, as long as the government

compensates the property owner for the loss.

The Legislature has delegated the power of eminent domain to local governments for specific purposes. The condemnation process, which is the process of exercising the power of eminent domain, is outlined in the statutes.⁹²

2.11.2 Purchase of Development Rights

The purchase of development rights (PDR) is a land conservation tool communities can use to protect important natural resources such as farmland, hillsides, and wetlands. Under a PDR program, a unit of government (city, village, town, county, or state), or a nonprofit conservation organization, such as a land trust, buys the development rights to land and places a conservation easement on the land. A conservation easement is a legal agreement between the entity purchasing the development rights and the property owner restricting the type and amount of development that may take place on the land. Easements can be tailored to the unique characteristics of the property and the interests of the landowner. The easement is recorded with the deed to the property to limit the future uses of the land as specified in the easement.

PDR programs are voluntary and the sellers of their development rights retain ownership and control of their land. They can sell or transfer their property at any time, but because of the easement, the land is permanently protected from certain types of development. The value of development rights to agricultural lands, for example, is based on the difference between what a property would be worth for non-farm development purposes and its value to a farmer for agricultural purposes.

2.11.3 Transfer of Development Rights

Situations may arise where a limitation on the use of land, imposed for the public good, inflicts an economic impact on a landowner that, while not confiscatory, is so substantial as to prompt the government to provide some type of compensation. A transfer of development rights (TDR) program can accomplish this objective by permitting the transfer of development rights from the burdened property (the "sending parcel") to

Guide to Community Planning in Wisconsin

certain other properties (the "receiving property") in the political subdivision. A TDR has value because the owner of the right is permitted to develop at greater than normal intensity at the receiving property. In this way farmers can get compensated for the loss of revenue they might be exposed to if regulations limit the development value of their land. Thus, a TDR program for preserving farmland can avoid the takings issue discussed in Section 3..

2.11.4 Conservation Easements

Conservation easements⁹³ are a legally binding agreement made voluntarily between a landowner (public or private) and a qualifying organization (also public or private), in which permanent limits are placed on a property's use and development.

2.12 Annexation/Incorporation

Cities and villages have the power to annex given to them by the state.⁹⁴ The power to extend municipal boundaries into adjacent unincorporated (town) lands allows a community to control development on its periphery. Annexation is often contentious and can lead to bad feelings between local governments.

As an alternative to annexation, an unincorporated area may incorporate as a city or village provided the unincorporated area meets certain statutory criteria. These criteria require an evaluation of the characteristics of the unincorporated area (is it reasonably compact, is there a reasonably developed community center, etc.), the tax base of the territory, the level of services provided, and impacts on the remainder of the town and the metropolitan community.⁹⁵

2.13 Cooperative Boundary Agreements

Cooperative boundary agreements can reduce some of the conflict regarding boundary issues, including annexation, that often arise between local governments. The Legislature has provided express enabling authority for these agreements.⁹⁶ The communities involved in such an agreement undertake cooperative preparation of a plan for the areas concerned. The plan for

changing or maintaining boundaries, and for controlling land use and services is sent to the Department of Administration. If the plan is approved, a contract binding the parties to it is put into effect.

2.14 Intergovernmental Agreements

Any municipality may contract with other municipalities to receive or furnish services or jointly exercise power or duties required or authorized by law.⁹⁷ The term "municipality" is defined to include the State, counties, cities, villages, towns, school districts, sanitary districts, public library systems, regional planning commissions, and other governmental and quasi-governmental entities. The requirements and procedures set forth for intergovernmental agreements are minimal. Such arrangements can prove useful in the implementation of a plan by facilitating efficient provision of public facilities and services.

2.15 Special Purpose Districts

Communities may need to establish a special purpose district to help implement planning objectives in certain areas. Districts that can be created include the following:

2.15.1 Metropolitan Sewerage Districts A metropolitan sewerage district can be created by the Department of Natural Resources if a county, city, village or town petitions for it.⁹⁸ The district is governed by an independent commission which has the authority, in the interest of plan implementation, to influence development densities by restricting the provision of public wastewater treatment services to lands described in local plans as not appropriate for urban or suburban development.

2.15.2 Town Sanitary Districts

Town sanitary districts are created by a town board⁹⁹ or the Department of Natural Resources¹⁰⁰ for the purposes of constructing and operating public water supply, sewage treatment, storm sewers, drainage improvements, and solid waste disposal facilities. The districts have the

Guide to Community Planning in Wisconsin

power to acquire property, levy special assessments, and collect charges for services.

2.15.3 Inland Lake Protection and Rehabilitation Districts

Inland lake protection and rehabilitation districts¹⁰¹ are established by local lake property owners and cities, villages, towns and counties for a variety of lake management purposes. The districts have the power to own property and levy special assessments to fund water quality studies and implement lake rehabilitation programs.

2.15.4 Business Improvement Districts

Business improvement districts (BIDS)¹⁰² can be created by cities, villages, and towns at the request of business owners in an area. Business owners are assessed a fee by the municipality. The money garnered from the assessment is then used by the municipality to fund pre-determined business-related activities and improvements. The idea is that the businesses and the municipality share the responsibility and the benefits of improving the business district. The improvements are aimed at attracting more customers. The businesses gain higher profits,

and the municipality eventually gains more tax revenue from higher real estate assessments.

2.15.5 Redevelopment Areas

Cities and villages may create redevelopment authorities¹⁰³ for the purposes of eliminating blight, clearing of slums, and redevelopment and renewal projects.

2.16 Land Trusts

Land trusts are private, community-based, non-profit organizations established to protect land and water resources for the public benefit. They work to protect a variety of natural and historic resources including scenic bluffs, farmland, lakeshore, wetlands, and rivers. Communities can be instrumental in forming a land trust by working with conservation minded citizens. A primary tool used by land trusts is the conservation easement.

Guide to Community Planning in Wisconsin

3. The Takings Issue

Often the planning process raises issues concerning the impact of public actions on private property. The takings issue recognizes the need to balance two competing principles: respect for the property rights of individuals and the public's ability to further the interests of all citizens by regulating an individual owner's potential uses of land.

These principles are expressed when one property owner argues: "I can do what I want with my property" while another property owner counters: "You cannot use your property in a way that will harm the interests of the community." It is difficult to draw an exact line separating the two interests. Instead, courts have developed various rules that attempt to balance private rights and public rights within the confines of both the United States and Wisconsin Constitutions. This balancing also occurs within the context of an increasingly complex society, so the rules are constantly evolving.

The Fifth Amendment to the United States Constitution states ". . . nor shall private property be taken for public use, without just compensation." This phrase is known as the "Takings Clause." The original purpose of the Takings Clause was to help define the basic relationship between private property and the federal government--the government can seize or take private property only when the government pays for it.

For many years, the Takings Clause of the United States Constitution was a limitation on only the power of the federal government and not on the activities of the states. It was not until 1897 that the United States Supreme Court decided that the Fifth Amendment applied to the states. The Wisconsin Constitution, however, has provided limitations on the taking of private property by the state and local governments since Wisconsin became a state in 1848. Article I, section 13, of the Wisconsin Constitution is similar in wording to the Takings Clause of the United States Constitution and provides that "the property of no person shall be taken for public use without just compensation therefore."¹⁰⁴

Originally, the Takings Clauses of the United States and Wisconsin Constitutions applied only to the direct appropriation of private property by the government, usually through the power of eminent domain. (the power of the state to take private property without the consent of the property owner through a process known as condemnation). The government can condemn or take property as long as it is for a legitimate public purpose and the government pays the property owner for the loss of the land.

In the 1920s, the United States Supreme Court opened the door to the possibility of applying the Takings Clause to regulations enacted under government's police power in a case called *Pennsylvania Coal Co. v. Mahon*.¹⁰⁵ The police power is a vague concept that encompasses the power of the government to promote the public welfare by restraining and regulating the use of liberty and property. The Court in *Mahon* recognized that while governmental regulation of property was appropriate, if the regulation is too restrictive, it would be the same as if the government had taken the property through condemnation requiring compensation to the property owner for the loss. This aspect of the takings issue is known as "regulatory takings."

While courts recognize that both the United States and Wisconsin Constitutions place limits on the ability of the public to regulate private property, the courts still recognize the importance of the public's right to regulate private property. In the case where the Wisconsin Supreme Court first decided that zoning land is not a "taking," the court stated that the right of government to protect and promote the public welfare outweighed those individual property rights protected by the Constitution. According to the court:

"Although one owns property, he may not do with it as he pleases, any more than he may act in accordance with his personal desires. As the interest of society justifies restraints upon individual conduct, so also does it justify restraints upon the use to which property may be devoted. It was not intended ... to so far protect the individual in the use of his property as to enable him to

Guide to Community Planning in Wisconsin

*use it to the detriment of society. By thus protecting individual rights, society did not part with the power to protect itself or to promote its general well-being.*¹⁰⁶

The courts recognize that regulations enacted to achieve a legitimate public purpose that impact the value of property are a cost of living in a civilized society. From a practical standpoint, the U.S. Supreme Court has acknowledged that "government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."¹⁰⁷ In addition, while certain regulations may diminish the value of property, other regulations increase the value of private property. The Wisconsin Supreme Court has found that: "He who is limited in the use of his property finds compensation therefore in the benefits accruing to him from the like limitations imposed upon his neighbor."¹⁰⁸

Whether the impact of a regulation is so great as to constitute a taking is often a question of degree based on the facts of a case. According to the Wisconsin Supreme Court, if a regulation impacts many property owners in a similar situation "and ought to be borne by the individual as a member of society for the good of the public safety, health or general welfare," then it will not be a taking. However, if the damage to an individual property owner is so great "that he ought not to bear it under contemporary standards, then courts are inclined to treat it as a 'taking' of the property."¹⁰⁹ The United States Supreme Court has also stated that the Fifth Amendment to the United States Constitution is "designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."¹¹⁰

Generally, the courts have found that a governmental action will be a taking if it: (1) results in the physical occupation or invasion of property by the public, such as an easement, flooding caused by the construction of a dam, covering someone's property with dirt, or requiring the disclosure of confidential data; or (2)

results in the loss of the title to all or a part of land; or (3) interferes with the right to pass on property to one's heirs; or (4) denies a land owner all economically beneficial or productive use of land.

Under the fourth standard, in order for there to be a taking, governmental activity generally has to deny a property owner all or almost all use of their property. Government regulations that deny only some of the uses or some of the value of property generally will not be a taking. The impact of a regulation on a property owner's reasonable investment-backed expectations for the property, but not the speculative value of future development, is important when measuring the remaining use or value of the property.

Situations may also arise where a property owner wishes to take land which may have limited value because of natural features such as wetlands, change the character of the land through filling and other means, and build a house or commercial building that destroys the wetland. If the property owner is denied the right to change the natural character of the land, the property owner might believe their property has been taken.

The Wisconsin Supreme Court, however, has held that people do not have an absolute right to change the natural character of land and use it for a purpose for which it is not naturally suited.¹¹¹ The economic impact of environmental regulations on property should therefore be based on the value of the land in its natural state and not the value that the land could potentially have after it is altered to something other than its natural condition. This applies to wetlands within a shoreland area, lands within a primary environmental corridor, or an isolated swamp.

The U.S. Supreme Court has stated that even if a regulation denies someone all economically beneficial use of their land, government may not have to pay compensation if the regulation is consistent with limitations based on certain property and nuisance laws.¹¹²

When evaluating whether a regulation that impacts only a part of someone's property is a taking, the uses that can be made of the entire property must be considered. The restricted portion of the property should not be isolated from

Guide to Community Planning in Wisconsin

the remaining property.¹¹³ For example, a portion of land impacted by a requirement in a zoning ordinance that prohibits all development within a certain distance from a road is not a taking of that land if the property owner can still construct a house on land not affected by that requirement.

The takings issue has a high profile in every state. When shaping a new plan it is important to be fair and to take potential takings situations seriously.

3.1 Vested Rights

A concept related to the takings issue is that of "vested rights." "Vested rights" refers to the government's permission to develop property that cannot be taken back by a subsequent governmental act. A right vests time when a proposed development is protected from changes in local regulations, such as zoning, by the local governing body. Generally, an owner of

undeveloped property does not have a vested right in the existing zoning of the property. For example, the governing body of the community may rezone an undeveloped parcel of property from commercial to single-family residential. The property owner, who has not applied to develop the property, has no vested right in the commercial zoning classification for that property. In Wisconsin, the right to the particular zoning of a parcel of property vests when the property owner applies for a building permit which complies with the applicable regulations.¹¹⁴

Guide to Community Planning in Wisconsin

4. Endnotes

1. The authority granted to cities to prepare master plans is found in sections 62.23(2) and (3) of the Wisconsin Statutes. Under section 61.35 of the Wisconsin Statutes, which references sec. 62.23, villages planning powers are the same as those granted to cities. Through a needlessly complex double reference, towns with village powers have similar planning powers to cities. Section 60.10(2)(c) of the Wisconsin Statutes provides that by a majority vote of electors at a town meeting, any Wisconsin town may take on some of the powers of a village. Under section 60.62(1) of the Wisconsin Statutes, a town board may adopt zoning ordinances using village authority under section 61.35 which references section 62.23. Presumably the reference to section 62.23 in its entirety gives towns with village powers the authority to adopt master plans.

2. Wis. Stat. §§ 62.23(1) and 62.23(2).

3. The statutes state that the plan commission may consist of the mayor, who is to be the presiding officer, the city engineer, the president of the park board, an alderperson, and three citizens. If the city does not have an engineer or park board, an additional citizen member must be appointed so the plan commission has seven members. The statutes, however, allow municipalities to modify the membership of the plan commission by ordinance to meet the unique needs of individual communities. Wis. Stat. § 62.23(1).

Towns with a population of less than 2,500, exercising zoning under village powers, can create a plan commission of five members consisting of the town chairperson, who is the presiding officer of the plan commission, the town engineer, the president of the park board, another member of the town board and one citizen. Additional citizen members need to be appointed if the town does not have an engineer or park board. Wis. Stat. § 60.62(4).

4. Wis. Stat. § 62.23(1)(e). If a city chooses not to create a plan commission, it may create a board of park commissioners to prepare a master plan for the city and to carry out other planning functions. Wis. Stat. § 27.08(4). It is unlikely that villages and towns with village powers have the powers to use a park board for the preparation of a master plan.

5. Wis. Stat. § 62.23(2).

6. Wis. Stat. § 62.23(2).

7. Wis. Stat. § 27.08(4).

8. Wis. Stat. § 62.23(6)(I).

9. Wis. Stat. § 62.23(3)(b).

10. Wis. Stat. § 62.23(3)(b).

11. Wis. Stat. § 62.23(3)(b).

12. Wis. Stat. § 62.23(7)(c).

13. *Bell v. City of Elkhorn*, 122 Wis.2d 558, 364 N.W.2d 144 (1985).

14. *See, e.g., Peterson v. Dane County*, 136 Wis.2d 501, 402 N.W.2d 376 (Ct. App. 1987).

15. Wis. Stat. § 62.23(3)(b).

16. 207 Wis.2d 156, 558 N.W.2d 100 (1997).

Guide to Community Planning in Wisconsin

17. Wis. Stat. § 236.13(1)(c).
18. Wis. Stat. sec. 60.61(4).
19. Wis. Stat. §§ 60.61(2) and (4).
20. Wis. Stat. § 59.69(3)(a).
21. Wis. Stat. § 59.69(2)(a).
22. Wis. Stat. § 59.69(2)(a)(2).
23. Wis. Stat. § 59.69(3)(a).
24. Wis. Stat. § 59.69(3)(b)(1). The Wisconsin Statutes also provide that "*the county board of any county may plan for the physical development and zoning of territory within the county . . . and shall incorporate therein the master plan adopted under s. 62.23(2) or (3) and the official map of any city or village in the county adopted under s. 62.23(6).*" Wis. Stat. § 59.69(1).
25. Wis. Stat. § 59.69(3)(e).
26. Wis. Stat. § 59.69(3)(b)(1).
27. Wis. Stat. § 59.69(3)(b)(2).
28. Wis. Stat. § 59.69(2)(d).
29. Wis. Stat. § 59.69(3)(c).
30. Wis. Stat. § 59.69(3)(d).
31. Wis. Stat. § 59.69(3)(a).
32. Wis. Stat. § 59.69(3)(c).
33. Wis. Stat. §§ 59.69(3)(d) and 59.69(2)(f).
34. Wis. Stat. § 59.69(3)(d).
35. *Kmiec v. Town of Spider Lake*, 60 Wis. 2d 640, 651-652, 211 N.W.2d 471 (1973).
36. Wis. Stats. § 66.945.
37. Wis. Stats. § 66.945(8).
38. Wis. Stat. § 66.945(9) - (10).
39. Wis. Stat. § 66.945(12)(a).
40. 23 U.S.C. 134.
41. Wis. Stat. § 66.023.

Guide to Community Planning in Wisconsin

42. Wis. Stat. § 91.51 - 91.63.
43. Wis. Stat. § 92.10.
44. Wis. Stat. § 28.11(5)(a).
45. Wis. Stat. § 27.04.
46. Wis. Stat. § 236.46.
47. Wis. Stat. § 27.019.
48. Wis. Stat. § 27.019(2).
49. Wis. Stat. § 59.70(2)(a).
50. Wis. Stat. § 281.31.
51. Wis. Stat. § 281.69.
52. Wis. Stat. § 66.55(4).
53. Wis. Stat. § 66.46(4).
54. Wis. Stat. § 60.66.
55. Wis. Stat. § 60.66(4).
56. Wis. Stat. § 66.406.
57. Wis. Stat. § 66.608.
58. Wis. Stat. § 66.431(6).
59. **Strategic Planning for Public and Nonprofit Organizations** by John Bryson (Jossey-Bass, 1995).
60. Wis. Stat. § 62.23(5). Failure to refer one of these actions to the plan commission can invalidate the action. *Scanlon v. City of Menasha*, 16 Wis. 2d 437, 114 N.W.2d 791 (1962).
61. *City of Berlin v. Stein*, 58 Wis.2d 417, 206 N.W.2d 207, 209-210 (1973), *cert. denied*, 414 U.S. 1092. *See also Walworth County v. City of Elkhorn*, 27 Wis. 2d 30, 133 N.W.2d 257 (1965).
62. In a recent case entitled *Lake City Corp. v. City of Mequon*, 199 Wis.2d 353, 544 N.W.2d 600 (Ct. App. 1996), the Wisconsin Court of Appeals questioned whether a city which already had a comprehensive zoning ordinance could adopt a moratorium. The court did not provide a definitive answer to its question but said that arguably there is implied authority for *all* cities, not just those without any zoning, to impose moratoria. While the Wisconsin Supreme Court reversed the Court of Appeals decision in the case on other grounds, it did not provide any guidance on the propriety of moratoria. *Lake City Corp. v. City of Mequon*, 207 Wis.2d 156, 558 N.W.2d 100 (1997).
63. Wis. Stat. § 62.23(7a).

Guide to Community Planning in Wisconsin

64. One of the leading cases nationally is a Minnesota case, *Almquist v. Town of Marshan*, 245 N.W.2d 819 (Minn. 1976).
65. In *Lake Bluff Housing Partners v. City of South Milwaukee*, 197 Wis.2d 157, 540 N.W.2d 189 (1995), the city enacted a moratorium by resolution (rather than by ordinance) on the issuance of building permits for one particular property. The Court, however, accepted the moratorium as valid for purposes of its review and did not provide any answers to the questions surrounding the validity of the moratorium. The Court seemed satisfied with the city's explanation that the moratorium would be valid if enacted by ordinance.
66. Wis. Stat. § 62.23 for cities. Wis. Stat. § 61.35 for villages.
67. Wis. Stat. § 69.69.
68. Wis. Stat. § 61.35. This authority is seldom used. Alternatively, towns in counties without general zoning may adopt village powers and use the city zoning enabling authority.
69. Wis. Stat. § 87.30.
70. Chapter NR 116 of the Wisconsin Administrative Code.
71. Wis. Stat. § 59.692 for counties, Wis. Stat. § 62.231 for cities, and Wis. Stat. § 61.351 for villages.
72. Chapters NR 115 (for counties) and NR 117 (for cities and villages) of the Wisconsin Administrative Code.
73. Wis. Stat. § 91.75.
74. Wis. Stat. § 62.23(7a).
75. Wis. Stat. § 62.23(7a)(b).
76. For a complete guide to rural cluster development, see the **Rural Cluster Development Guide** prepared by the Southeastern Wisconsin Regional Planning Commission (Planning Guide No. 7, 1996).
77. Wis. Stat. § 236.45.
78. The extraterritorial plat approval jurisdiction is the area within 3 miles of the corporate limits of a first, second, or third class city and within 1½ miles of a fourth class city or village. Wis. Stat. § 236.02.
79. Wis. Stat. § 62.23(6) for cities, villages and towns with village powers via Wis. Stat. § 61.35. See also Wis. Stat. § 60.61(2)(e) for towns located in counties which have not enacted a county zoning ordinance. For a detailed explanation of the official mapping function of local government see the publication entitled **Official Mapping Guide**, prepared by the Southeastern Wisconsin Regional Planning Commission in 1996 (Planning Guide No. 2, Second Edition).
80. Wis. Stat. § 80.64(1).
81. Wis. Stat. § 236.46.
82. Wis. Stat. § 59.70 (counties); Wis. Stat. § 62.17 (municipalities); Wis. Stat. § 60.61(1m) (towns). See also Chapter 101 of the Wisconsin Statutes, especially Wis. Stat. §§ 101.65, 101.76, and 101.86.
83. See, e.g., Wis. Stat. §§ 66.301 - 66.303.

Guide to Community Planning in Wisconsin

84. Wis. Stat. § 59.70(5). In Milwaukee county, the cities and villages must enact these ordinances.
85. Wis. Stat. § 59.70(22) (counties); Wis. Stat. § 60.23(29) (towns); Wis. Stat. §62.23(7)(a) (general grant of zoning enabling authority to cities and villages). County ordinances do not apply within cities, villages and towns which have enacted ordinances regulating the same subject matter.
86. The authority for counties to enact historic and burial site preservation ordinances is found in sections 59.97(4)(l) and (m) of the Wisconsin Statutes. The authority for towns is found in sections 60.61(2)(h) and 60.64, and the authority for cities and villages is found in sections 62.23(7)(c) and (em) of the Wisconsin Statutes.
87. While there is no express authority in Wisconsin's planning and zoning enabling laws for design review, the process of design review was strongly endorsed by the Wisconsin Supreme Court many years ago in *State ex rel. Saveland Park Holding Corp. v. Wieland*, 269 Wis. 262, 69 N.W.2d 217 (1955).
88. For additional information on capital improvement programming see **Developing a Capital Improvement Plan and Budget** by Doeksen, Eilrich and Frye (University of Wisconsin Cooperative Extension, Local Government Center and the Center for Community Economic Development, 1995); and **Capital Improvement Programs**, by Robert A. Bowyer. (American Planning Association Planners Press--Planning Advisory Service Report Number 442, 1993).
89. Wis. Stat. §66.55.
90. Wis. Stat. § 70.32.
91. Wis. Stat. § 66.46.
92. Wis. Stat. Chap. 32.
93. Conservation easements are provided for in Wis. Stat. § 700.40.
94. For a detailed explanation of the annexation process in Wisconsin see **Annexation of Territory to Wisconsin's Cities and Villages** by Curtis Witynski and Claire Silverman (League of Wisconsin Municipalities, 1998).
95. Wis. Stat. §§ 66.015 - 66.016.
96. Wis. Stat. § 66.023.
97. Wis. Stat. § 66.30.
98. Wis. Stat. §§ 66.20 - 66.26. The Milwaukee Metropolitan Sewerage District is governed by Wis. Stat. §§ 66.88 - 66.918.
99. Wis. Stat. § 60.71.
100. Wis. Stat. § 60.72.
101. Wis. Stat. Chap. 33. See also **A Guide to Wisconsin's Lake Management Law** published by the University of Wisconsin Extension at the College of Natural Resources, UW-Stevens Point.
102. Wis. Stat. § 66.608.

Guide to Community Planning in Wisconsin

103. Wis. Stat. § 66.431.
104. For an analysis of the takings decisions of the Wisconsin Supreme Court, see Brian W. Ohm, "Towards a Theory of Wisconsin Regulatory Takings Jurisprudence," **Wisconsin Environmental Law Journal**, vol 4, no. 2 (1997).
105. 260 U.S. 393 (1922)
106. *State v. Harper*, 182 Wis. 148, 153, 196 N.W. 451, 452 (1923).
107. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. at 413 (1922).
108. *State v. Harper*, 182 Wis. at 154, 196 N.W. at 453.
109. *Stefan Auto Body v. State Highway Commission*, 21 Wis. 2d 363, 369-70, 124 N.W. 2d 319, 323 (1963).
110. *Armstrong v. United States*, 364 U.S. 40, 49 (1960).
111. *Just v. Marinette County*, 56 Wis. 2d 7, 201 N.W. 2d 761 (1972); *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 548 N.W. 2d 528 (1996).
112. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).
113. *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 548 N.W. 2d 528 (1996).
114. *Lake Bluff Housing Partners v. City of South Milwaukee*, 197 Wis. 2d 157, 540 N.W. 2d 189 (1995).

Chapter 3

THE PLAN COMMISSION

Chapter 3

- 1. Plan Commission Structure**
- 2. Plan Commission Functions**
- 3. Convening and Conducting Meetings**
 - Notice Requirements**
 - Public Hearings**
- 4. Attributes of a Good Commissioner**
- 5. Resource Materials**
- 6. Endnotes**

The plan commission is an essential part of community planning. Plan commissioners have the duty to protect both the public interest and the constitutional rights of individuals. The more a commissioner knows about planning and the legal context in which planning exists, the more likely good planning will happen in the community and that good outcomes will follow because of planning.

Plan commissions have a long history in Wisconsin, dating back to 1909, when the Legislature first authorized cities to create plan commissions. Milwaukee was one of the first cities in the country to establish a plan commission.

This chapter provides a brief discussion of the structure, roles, and responsibilities of the plan commission. In this chapter, and throughout the *Guide*, the term “plan commission” is used generically to refer to local planning entities which may be called “planning commission,” “plan commission,” “zoning committees,” “planning and zoning committees,” etc.

1. Plan Commission Structure

The *Wisconsin Statutes* authorize counties, cities, villages, and towns to create plan commissions. The structure of the plan commission is summarized below.

1.1 The Municipal Plan Commission

The *Wisconsin Statutes* allow a city, village, or town exercising village powers to form plan commissions. The law outlines the requirements for the formation and composition of the plan commission.¹ The governing body may form a plan commission by ordinance. The ordinance can establish the membership of the plan commission to meet any composition chosen by the governing body.² Absent an ordinance specifying a different membership, the *Wisconsin Statutes* state that the plan commission is to consist of seven members: the mayor³ (who chairs the plan commission), the president of the park board, the city engineer, an alderperson, and three citizens. If a municipality does not have an engineer or does not have a park board, the number of citizen members is increased so that the commission has seven members.⁴

The alderperson shall be elected to the plan commission annually by a majority vote of the council.⁵ The citizen members are appointed by the mayor or village president for a three year term.⁶

Towns with a population of less than 2,500, exercising zoning under village powers,

Guide to Community Planning in Wisconsin

also have the option of creating a plan commission of five members. The members consist of the town chairperson, who chairs the plan commission, the town engineer, the president of the park board, another member of the town board and one citizen. Additional citizen members need to be appointed if the town does not have an engineer or park board.⁷

The citizen members should be people of recognized experience and qualifications. They also should be representative of the diversity of people that live in the community. Members of the commission in a larger, diverse community might include business leaders, homemakers, planners, attorneys, representatives of various racial and ethnic groups in the community, educators, and retirees.

1.2 The County Planning and Zoning Agency or Commission

Counties have a number of options for creating a county zoning agency to engage in planning functions. The county zoning agency responsible for planning can also go by a number of different names. The county board of supervisors may create a planning and zoning committee as an agency of the county board to engage in planning. The board may also create a planning and zoning commission consisting wholly or partially of citizen members. The board may also designate any previously established committee or commission as the county zoning agency to act in all matters related to planning.⁸

In counties where there is a county executive, the county executive appoints the members of the committee and may appoint alternates, subject to confirmation by the county board.⁹

The zoning and planning agency or commission can select its own chairperson to serve a two year term. The committee may also select other officers such as a vice chair and secretary.¹⁰

The same attention to maintaining a diverse representation on the municipal plan commission should be paid at the county level as well. A diverse representation improves the committee's chances of making fair and balanced decisions.

APA National Plan Commission Facts¹¹ *Plan Commissioners by Occupation*

Architects	4%
Engineers	6.8%
Homebuilders	4.2%
Real Estate	8.1%
Businesspeople	27.5%
Lawyers	6.4%
Educators	7.8%
Homemakers	6.3%
Retirees	11.2%
Other	17.7%
Total	100%

1.3 Towns Without Village Powers

Towns without village powers have two alternatives to engage in limited planning activities. One alternative involves the formation of a town park commission,¹² which can be created at the annual town meeting. The park commission consists of seven members appointed by the town board to staggered terms.

Another alternative is formation of a town zoning committee,¹³ which has limited plan implementation powers. Few towns in Wisconsin use these alternatives. Most towns with their own planning program operate as towns with village powers.

Guide to Community Planning in Wisconsin

2. Plan Commission Functions

The functions of the plan commission at the municipal and county level are very similar. The overall function of the plan commission is to assist the governing body in developing programs and analyzing and reviewing development proposals.

A more specific function of the plan commission is to educate the governing body and citizens on planning and development matters. A plan commissioner first needs to learn about planning and development concerns by talking with local business people, concerned citizens, builders, and others. These encounters can broaden the base for planning and allow commissioners to learn about the public's attitudes and values so the commissioner can better represent community interests. Plan commissioners can also learn about the technical aspects of planning by talking with the planning and engineering staffs and by familiarizing themselves with community plans and ordinances. Plan commissioners then need to pass this information on to the governing body and the public.

Plan Commission Roles

1. Education
2. Institutional
3. Technical

The plan commission also has an important institutional role. The commission needs to make itself indispensable to the work of the community. It is essential that the commission involve itself in making plans and keeping those plans current. It is the role of the plan commission to be active in proposing courses of action for government to follow. It must make the planning process relevant to both day-to-day issues and long range issues. The commission, through its plans, must establish the long range framework for handling day-to-day decisions in a practical manner.

The plan commission also has a technical

role through which it gives meaning to planning. These technical roles are explored below. For the most part, the plan commission exercises these technical roles in an advisory capacity to the governing body.

2.1 Plan Making

The primary function of a plan commission is the development of a master plan (for cities, villages, and towns with village powers) or a county development plan. The plan commission also oversees amendments to these plans. The plan commission often is also involved in the preparation of other plans prepared by the community. (See Chapter 2 for a discussion of the various plans that a community may prepare.)

2.2 Subdivisions

In counties, cities, villages, and towns, the establishment of a plan commission is a prerequisite to the adoption of local subdivision regulations. The ability of a county to approve certain plats is in some cases dependant upon the county having a plan commission.¹⁴ (See Chapter 7 for a detailed discussion of local subdivision regulation.) Before a local governing body can adopt a subdivision ordinance or an amendment to the ordinance, the ordinance must receive the recommendation of the plan commission.¹⁵

At a minimum, plats must be referred to the plan commission for consideration prior to final action by the governing body.¹⁶ In addition, approval of preliminary and/or final plats may be delegated by the governing body to the plan commission.¹⁷

Plan Commissions in Action

The role of the plan commission in creating plans often takes backseat in communities where planning has been happening for a number of years. A national survey of planning commissioners in the 1980s showed that plan commissions tend to spend most of their time on zoning matters and subdivision review. Long-range planning did not engage a large proportion of the commissioners' time. In fact, over 30

Guide to Community Planning in Wisconsin

percent of the commissioners surveyed spent less than 5 percent of their time on long-range planning activities. Most of the commissioners in the survey felt that their time was best served dealing with the day-to-day issues. However, the professional planners that work with the commissioners tended to believe that the commission should be devoting more time to long range planning¹⁸.

2.3 Zoning

If a county, city, village, or town decides to prepare a general zoning ordinance, the *Wisconsin Statutes* require that the plan commission prepare the ordinance and recommend adoption to the governing body. These plan commissions are also required to review and provide recommendations on amendments to the zoning ordinance. (See Chapter 6 for a discussion of general zoning.)

Plan commissions also are involved in special zoning issues, such as extraterritorial zoning, shoreland and wetland zoning, exclusive agriculture zoning under the Farmland Preservation Program, floodplain zoning, and construction site erosion control and stormwater management ordinances.

Wisconsin law also allows the plan commission to decide special exceptions and conditional uses.¹⁹ If the plan commission does not decide these issues, either the board of adjustment/appeals or the governing body can decide.

2.4 Official Map

The plan commission often reviews and provides recommendations to the governing body on official maps prepared for a town, village or city. Amendments to the official map must be referred to the plan commission for a report prior to adoption by the governing body.²⁰

2.5 Other Referrals

In cities, villages, and towns exercising village zoning powers, a number of important

community decisions must be referred to the plan commission for consideration and a report before final action is taken by the governing body.²¹ These matters include:

- The location and architectural design of any public building;
- The location of any statue or other memorial;
- The location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for any street, alley or other public way, park, playground, airport, area for parking vehicles, or other memorial or public grounds;
- The location, extension, abandonment, or authorization for any public utility whether publicly or privately owned;
- The location, character and extent or acquisition, leasing or sale of lands for public or semipublic housing, slum clearance, relief of congestion, or vacation camps for children.

As these matters are referred to the plan commission, the commission has a very important opportunity to comment on how these matters relate to plans prepared by the commission.

In counties, the county plan commission must comment on the effect of cooperative boundary agreements plan between cities, villages, and towns on the county development plan, regional master plan, and other aspects of the cooperative plan.²²

2.6 Other Programs

A number of other programs also provide for the involvement of the plan commission, usually in the advisory capacity of reviewing and reporting on aspects of the programs. These programs include business improvement districts,²³ architectural conservancy districts,²⁴ tax increment financing,²⁵ urban redevelopment programs,²⁶ and the creation of pedestrian malls.²⁷

The plan commission may also be involved in programs at the discretion of the local governing body. On other occasions, the commission may be asked for reactions to a federal or state agency project that might affect community development, such as a state highway

Guide to Community Planning in Wisconsin

or watershed development project. A community can also establish by local ordinance or policy that certain matters are sent to the plan commission for review. The matters may include cooperative plans for boundary change, annexation, the plans of local public utilities, etc.

Tools of the Plan Commission²⁸

- Plans, policy statements, back-up data reports
- Maps at a usable scale
- Ordinances (zoning, subdivision, sanitary, sign, etc.)
- Bylaws, rules, and, written procedures
- Copies of regional/state programs (farmland preservation/shoreland/ floodplain/sewer service area, etc.)
- Forms, information received by the public when a development is proposed.

2.7 Day to Day Operations

The plan commission may adopt rules that set out procedures for addressing matters referred to its attention.²⁹ The rules need to be consistent with the requirements of state law and the ordinance and other official actions taken to establish the committee. The rules may also need to be adopted by the local governing body responsible for the creation of the plan commission.

The rules may deal with parliamentary procedure governing the conduct of the meeting. The rules may discuss the membership of the commission, the establishment of officers for the committee, and the role of staff in interacting with

the commission. The rules may also establish times when the commission will hold of regularly scheduled meetings, the basic order of business to be followed at those meetings, provisions for how public notice will be given, and how public hearings will be conducted.

The plan commission needs to keep records of its activities. The rules should specify how those records will be kept.

Depending on the plan commission's workload and the complexity of matters brought before it, the commission may want to establish subcommittees to deal with specific issues. Preparing special studies to address special problems can be an important function. The plan commission can also employ a staff or hire consultants.

However, funding for the staff and consultants will probably need to be approved by the governing body through its budgeting process. To this end, the plan commission needs to be involved in preparing a budget for community planning purposes and to lobby for this budget. A local planning program can only be carried out effectively if properly funded.

2.8 Hold Public Hearings

Another important function of the plan commission is to hold public hearings on a variety of matters related to planning. The conducting of a public hearing is discussed below.

Guide to Community Planning in Wisconsin

3. Convening and Conducting Meetings

3.1 Meeting Dates

The rules of the plan commission, as discussed above, should specify a regular meeting date (e.g. the first and third Tuesday of the month, the second Monday of the month, etc.) and methods for calling special meetings.

3.2 Giving Notice of Meetings

Wisconsin's open meeting law³⁰ requires that the chair of the plan commission, or the chair's designee, give separate notice for each meeting, including regular and special meetings and public hearings. A meeting also includes any gathering of the plan commission when the purpose of the gathering is to engage in plan commission business and the number of plan commission members present is sufficient for a quorum.³¹ For example, plan commission tours of sites pending development applications may require public notice. Telephone conference calls may also require public notice.³²

The notice must contain the time, date, place, and subject matter of the meeting, including the subject of any closed session in reasonable detail to inform the public about the business of the meeting.³³ The notice should be posted at least twenty-four hours prior to the meeting. In limited situations, it is sufficient to post notice of the meeting two hours prior to its start.³⁴

The notice must be provided to (1) the public by posting the notice in three places likely to be seen by the general public; (2) the official newspaper for the community; and (3) any news media that have filed a request for notices.³⁵

Closed meetings are allowed in limited circumstances, such as if the plan commission needs to meet with legal counsel regarding a potential lawsuit.³⁶ Closed meetings are not allowed to decide controversial issues such as a rezoning.

Commissioners can be fined if an open meeting violation occurs.

3.3 Other Notice Requirements

Complying with the minimum notice requirements of the open meeting law does not replace the need to comply with other notice requirements which appear in the various planning enabling laws.³⁷

For example, the *Wisconsin Statutes* require that a public hearing be held on initial drafts of zoning ordinances and on particular amendments to adopted zoning ordinances. These hearings require a Class 2 notice. A Class 2 notice requires publication of the meeting in the official newspaper of the community for two consecutive weeks. The last notice must be published at least a week before the public hearing.³⁸ The secretary or clerk should get an affidavit of publication from the newspaper to keep as a record that the law has been followed.

Communities that do not have an official newspaper of record may elect to satisfy the publication requirements in another manner. In such cases, the notice must be posted in three public places at the time the first newspaper insertion would have been required. The notice must remain posted until the start of the hearing.³⁹ To have record of the posting, the clerk or secretary should make an affidavit of it.

3.4 The Conduct of Public Hearings

The public hearing is an important part of the planning process. The plan commission may adopt rules governing the hearings.

Generally a public hearing begins with the chair of the plan commission calling the hearing to order. This call to order should be at the announced time for the public hearing, even if it occurs in the middle of a regularly scheduled plan commission meeting at which various other matters are being considered. The chair should introduce the commission and explain briefly why the meeting was called and identify the application. The chair should also explain how the hearing will proceed and confirm that open meeting and other public notice requirements have been met.

The chair should next have someone explain the proposal. The most appropriate

Guide to Community Planning in Wisconsin

person to explain the proposal may be the applicant and/or consultants working for the applicant. It could also be the planning staff.

The chair should then ask for the planning staff report on the application. The report should discuss the relation of the proposal to the community's plans, the effect of the proposal on the community, and recommendations for action. If the community does not have a planner, the chair should explain the relation of the proposal to the community's plans.

After that, the chair should call on other persons who wish to make presentations on the proposal. These people may have indicated their desire to speak on a registration slip which they filled out before the hearing. During the hearing the chair can ask for people to indicate their interest in testifying appearances of record.

All persons who speak should state their names and whether they are appearing in favor of the proposal, or in opposition to it, or whether they merely wish to make a statement. These may include the property owner (if different from the applicant), or consultants hired by the applicant, a representative of an organized neighborhood group, etc. Usually the proponents of the action are allowed to speak first, followed by opponents of the proposal.

After each presentation by the various parties testifying at the hearing, the chair should ask whether there are any questions of the person from the other parties or the plan commission. To keep order, questions should be directed to the chair who in turn questions the person. Serving as chair is a difficult position, especially when dealing with difficult people. It is important that the chair conduct the hearing in an fair and disciplined manner.

After all testimony has been presented, commission members should make statements for the record regarding any factual information not mentioned in the testimony. The chair should then close that the hearing and announce the time and method of deliberation.

It is important that the secretary of the commission take very good minutes of the hearing. The minutes should identify which plan commissioners were in attendance, the nature of the hearing, the persons who made appearances at

the hearing, and a summary of each person's testimony.

If possible, the commission should make its decision following the hearing or at the meeting which occurs immediately after the hearing. The chair should allow a suitable time for debate and deliberation by the plan commission members. The chair should then ask for a motion and a vote.

The commission needs to prepare written findings and a recommended action to the governing body. This written documentation should explain how the plan commission progressed from the facts through established policies to the decision. The findings should list (1) all of the facts considered by the commission (documents, exhibits, testimony, etc.); (2) the standards used to make the decision; and (3) how the facts were weighed against the standards. The documentation should also include conclusions about the adherence of the facts to the standards and the recommendation to the governing body with any conditions or restrictions required for the proposal.

The written documentation could be prepared by the community's planner, attorney, clerk, or the secretary of the plan commission. Once prepared, the written documentation should be sent to the applicant, the governing body for final action, and other people who have requested it.

3.5 Due Process

The basic principles for convening and conducting meetings are meant to provide citizens with what is called "due process." These principles, which are derived from the Wisconsin and U.S. Constitutions, are meant to protect citizens from arbitrary governmental actions. Due process ensures that government agencies and officials act fairly in making decisions.

The courts have recognized two categories of due process. The first is "procedural due process." Procedural due process refers to the process or manner of decision making. The second is "substantive due process." Substantive due process concerns the fairness or reasonableness of the result of the decision. This chapter focuses on the process of decision making.

Guide to Community Planning in Wisconsin

The basic procedural due process requirements are: the need for adequate and timely **notice** of the governmental action; the need to provide all parties interested in a proposed action with the **opportunity to be heard** and present evidence to support their position; and the need for **fair and informed decision making**.

Fair and informed decision making requires that all parties have full access to information, statements, and evidence relied upon by decision makers to make their decisions. Commissioners should avoid acting on information received at the last minute.⁴⁰ Plan commissioners and other decision makers should be clear of bias or prejudice. Prior to the hearing, conflicts of interest or apparent conflicts of interest must be identified. In addition, decisions regarding a proposal should be made in a timely fashion. The commissioners may not use the process as a deliberate delaying tactic.

As proof of giving notice, providing an opportunity to be heard, and fair and informed decision making, communities need to keep a full and complete record of the proceedings. This should include more than the findings and recommendation. It should include all evidence that is offered and used to come to the decision.

Having clear rules for the proceedings before the plan commission are also important for ensuring that all the necessary steps have been followed.

Following the statutory requirements for notice and hearings is important for meeting due process. However, knowing what process is due will vary depending on the nature of the plan commission's action, the nature of the interest of

the person affected by the action, and the degree to which the commission's action actually affects a person's interest in "life, liberty, or property" protected by the U.S. or Wisconsin constitutions.

In the past, courts have made a distinction between two types of governmental actions-- "legislative" and "quasi-judicial." Legislative actions are those that involve the adoption of general public policies such as the adoption of a plan, the adoption of a zoning ordinance, or rezoning a parcel of property.⁴¹ Quasi-judicial actions (or adjudicative actions) usually involve the application of previously adopted policies to individual cases and specific factual settings, as in the case of issuing conditional use permits. Quasi-judicial are more likely to raise issues of fairness and impact a person's protected interests in life, liberty, or property. As a result, quasi-judicial actions require more extensive procedural protections for the individual. These protections may include a written transcript of the proceedings, sworn testimony, and the right to cross-examine witnesses.

If plan commissions comply with these basic tenets of procedural due process, they will have established a defensible procedure if a decision is challenged in the courts. However, meeting the legal requirements for due process does not satisfy the political need for effective citizen participation in the development of plans and ordinances.

Guide to Community Planning in Wisconsin

4. What Makes A Good Plan Commissioner?

There are several skills and attributes that make for a good plan commissioner. Some of them are personal attributes, others are learned abilities that take work to develop. The individual attributes that make for a good plan commissioner include:

- Civic mindedness;
- An interest and belief in planning;
- An openness to new ideas;
- The ability to consider cases or situations objectively;
- The ability to avoid conflicts of interest so the position is not used to benefit oneself;
- The ability to consider the long-term affects of actions, not just the short-term impacts;
- The ability to apply adopted plans and policies to individual situations to make decisions.

Having an aptitude to be a good commissioner is only a start, however. In order to make good decisions, commissioners need to have substantive knowledge about planning issues and procedure.

4.1 Ethics

The *Wisconsin Statutes* outline a code of ethics that all local officials in Wisconsin need to follow.⁴² These statutory standards provide the basic level of conduct for local officials to ensure fair and impartial decisions. Generally, a local official cannot use his or her public position for private gain, either individually or for immediate family members or organizations with which the official is associated.

In addition to these statutory standards, the American Institute of Certified Planners, an institute of the American Planning Association, has developed a guide to ethical conduct for anyone who participates in the planning process as an advisor, advocate, or decision maker. These standards are included as Appendix 2. Following the principles developed by the American Planning Association and the American Institute of Certified Planners will result in a better planning process.

Guide to Community Planning in Wisconsin

5. Resource Materials

THE JOB OF THE PLAN COMMISSIONER

The Planning Commissioners Guide, by David J. Allor (American Planning Association, 1984).

The Job of the Planning Commissioner, Third Edition, by Albert Solnit (Wadsworth Publishing Co., 1982).

Planning Commissioners Journal, a quarterly publication designed for citizen planners, including municipal and county planning commissioners and zoning board member. A subscription is available from P.O. Box 4295 Burlington, Vermont 05406. Telephone 802-864-9083.

THE OPEN MEETING LAW

Wisconsin Open Meetings Law: A Compliance Guide, prepared by the Wisconsin Department of Justice (1993).

Understanding Wisconsin's Open Meeting Law, by Burt P. Natkins and James H. Schneider (Local Government Services, Inc., 1994).

Guide to Community Planning in Wisconsin

6. Endnotes

1. Wis. Stat. § 62.23(1). Section 62.23 of the Statutes is applicable to villages by reference of Wis. Stat. § 61.65 and to towns exercising planning and zoning under village powers by reference of Wis. Stat. § 60.62.
2. Wis. Stat. § 62.23(1).
3. For villages, the corresponding officer would be the village president. For towns, the corresponding officer would be the town board chairperson.
4. Wis. Stat. § 62.23(1)(a).
5. Wis. Stat. § 62.23(1)(b).
6. Wis. Stat. § 62.23(1)(c).
7. Wis. Stat. § 60.62(4).
8. Wis. Stat. § 59.69(2)(a).
9. Wis. Stat. §§ 59.69(2)(a)(2) and (3).
10. Wis. Stat. § 59.69 (2)(b).
11. Sanders, Welford and Judith Getzels, **The Planning Commission: Its Composition and Function, 1987** (American Planning Association Planning Advisory Service, Report Number 400, 1987). (Data from a national survey of over 4000 plan commissioners in 528 cities.)
12. Wis. Stat. § 60.66.
13. Wis. Stat. § 60.61.
14. See, e.g., Wis. Stat. § 236.10(1).
15. Wis. Stat. § 236.45(4).
16. See Wis. Stat. § 62.23(5) for cities, villages, and towns with village powers.
17. Wis. Stat. § 236.10(3). However, final plats dedicating streets, highways, or other lands must be approved by the governing body of the city, village, or town in which the land is located.
18. Sanders, Welford and Judith Getzels, **The Planning Commission: Its Composition and Function, 1987** (American Planning Association Planning Advisory Service, Report Number 400, 1987).
19. Wis. Stat. § 62.23(7)(e)1 (for cities, villages and towns exercising zoning authority under village powers); Wis. Stat. § 59.694(1) (for counties).
20. Wis. Stat. § 62.23(6)(c).
21. Wis. Stat. § 62.23(5). Failure to refer one of these actions to the plan commission can invalidate the action. *Scanlon v. City of Menasha*, 16 Wis. 2d 437, 114 N.W.2d 791 (1962).

Guide to Community Planning in Wisconsin

22. Wis. Stat. § 66.023(4)(c).
23. Wis. Stat. § 66.608.
24. Wis. Stat. § 66.609.
25. Wis. Stat. § 66.46.
26. Wis. Stat. §§ 66.405 - 66.425.
27. Wis. Stat. § 66.298 and Wis. Stat. § 66.610.
28. Adapted from **The Job of the Planning Commissioner** (Third Edition) by Albert Solnit (Wadsworth Publishing Co., 1982).
29. Wis. Stat. § 62.23(2).
30. Wis. Stat. §§ 19.81 - 19.98.
31. *State ex rel. Newspapers v. Showers*, 135 Wis.2d 77, 102, 398 N.W.2d 154 (1987).
32. 69 Op. Atty. Gen. 143 (1980).
33. Wis. Stat. § 19.84(2).
34. Wis. Stat. § 19.84(3).
35. Wis. Stat. § 19.84(2).
36. Wis. Stat. § 19.85(1).
37. Wis. Stat. § 19.84(1)(a).
38. Wis. Stat. § 985.07.
39. Wis. Stat. §§ 985.05 (1) and 985.02(2).
40. See *Weber v. Town of Saukville*, 209 Wis.2d 214, 562 N.W.2d 412 (1997) (application for a conditional use permit must be complete at the time of the initial notice of the final public hearing on the permit).
41. See *Quinn v. Town of Dodgeville*, 122 Wis.2d 570, 364 N.W.2d 149 (1985) regarding zoning and rezoning functions as legislative acts.
42. Wis. Stat. § 19.59.

Chapter 4

DATA COLLECTION AND ANALYSIS

Chapter 4

1. GIS
2. Population Data
3. Land Supply/Demand
4. Fiscal Impact Analysis
5. Resource Materials
6. Endnotes

Planning involves more than simply drawing lines on a map. Planning involves collecting and analyzing information used to help understand a community. The information can be the basis for communication that can build consensus around issues of public policy. Finally, the information can provide the basis for local decision making.

Typical information necessary to conduct a planning process includes information about the natural resources of an area (soils, wetlands, sensitive groundwater recharge areas, etc.); the population characteristics of a community; the economic base of a community; the location of public and private utilities; historic structures; and other aspects of the community, including the regional and statewide context for a community.

There are often many sources for people to obtain important information about the characteristics of their community. Some sources are included in Appendix 1. The availability of this information may vary by community.

A few sources of information and very useful analytical planning tools are described within this chapter. These are: geographic information systems, demographics, land supply

and demand analysis, and fiscal impact analysis.

1. Geographic Information Systems

Basic mapping is important for community planning. Most data held in local government data bases can be tied to a location, explicitly as a coordinate on a map or implicitly as a street address, parcel identification number, or public land survey section number. As a result, location is a tremendous tool for organizing, analyzing, and displaying these data. Community planning requires integration of many different kinds of data -- land ownership, land use, soils, topography, etc. A geographic information system (GIS) provides the means to pull together data that cannot be related except by location. "Layers" can be combined, analyzed, and displayed as needed.

A GIS is more than a collection of data and software to manipulate it, though. To generate information useful for decision making, the system must be tuned to the needs of an organization. Personnel are needed to manage the system. Planners and decision-makers need to know what kinds of information can be derived and what kinds of products can be generated. Data sharing and other inter-organizational agreements are needed to keep data affordable, up-to-date, and reliable.

Fortunately, Wisconsin has made a significant public investment in GIS at the local level -- building the spatial reference framework, automating critical data, investing in hardware and software, and fostering system development and

Guide to Community Planning in Wisconsin

institutional relations. As a result, GIS can and should be a useful tool in planning and management activities.

This section provides a brief introduction to GIS in Wisconsin. A description of the technologies used for geographic data is presented first, followed by an overview of the kinds of data that may be relevant to local planning. The section concludes with an overview of the Wisconsin Land Information Program and how it supports local planning efforts.

1.1 GIS Technologies

1.1.1 Software

The core of a geographic information system is the software used to manipulate geographic data (the software is often called a GIS, though as noted, it is really only one component). The choice of software for land use applications should be driven by many considerations, including:

functionality -- does the software provide the needed information, in a useful form?

cost -- how much does the system (not just the software it is based on) cost to operate?

availability of data -- how difficult is it to automate data or acquire data from other agencies in the format used by the software package?

ease of use -- how difficult is it to learn the package; does the company provide good support; are there other users with similar circumstances using the package (learning from experience)?

Because of selection criteria such as these, most counties and many municipalities around the state have selected products from ESRI (based in Redlands, California) such as Arc/Info and ArcView. Other GIS software used in the state include packages from Intergraph and Genasys. In addition, many local governments use CAD (computer assisted drafting, or computer aided design) packages such as AutoCAD. CAD packages mainly provide data automation and display functions -- the mapping but not the

integration and analysis functions of a GIS.

Because of the predominance of Arc and AutoCAD in the state, the data formats of these packages has become a common way to exchange digital data.

For local government planning purposes, a package such as ArcView can provide much of the needed functionality, but not all. ArcView is relatively inexpensive and easy to learn and use. It will provide "query and display" functions -- the ability to extract information from a data base, combine different layers, and generate on-screen reports, and public display graphics. Importantly, ArcView has an "address-matching" function. The software is able to determine a spatial location given a street address, providing an important linkage into tax, health, labor, crime, and other local records. However, ArcView and similar simpler packages do not have the data automation and analysis functions of a more complete package. A small unit of government wanting to use a package such as ArcView for planning should work with another agency such as a county land information office or a regional planning commission that has staff and software for a full range of GIS functions.

1.1.2 Hardware

Most commercial GIS software now runs on DOS/Windows desktop computers. Because the software applications involve many computations and because the work done with GIS may involve large data sets, computers need to be "high end." Software is also available for a variety of Unix platforms, but generally not for the proprietary operating systems of mainframe computers maintained in some counties.

Maps and other graphics from GIS are typically generated on inkjet plotters. Color plotters for report size graphics (up to 11" X 17") are available for not much more than equivalent laser printers, and may serve multiple purposes. Larger format plotters for display graphics (e.g., public meetings) are expensive. Unless there is extensive demand for these products, it will be preferable to make arrangements with agencies already in possession of such devices. Scanners and digitizers are used for data automation. If

Guide to Community Planning in Wisconsin

ongoing or extensive data automation is to be part of a system, a carefully planned strategy is required. Otherwise, other agencies or consultants can be hired for data acquisition.

1.1.3 Related Technologies

Figure 1 shows the broad range of technologies that actually comprise the range of GIS functions. These might be incorporated into a single stand alone package such as Arc/Info, or might be an amalgam of several software packages.

Of particular note is the role of GPS -- the global positioning system. GPS is a surveying technology that provides accurate locations based on satellite telemetry using simple and relatively inexpensive equipment. It is seeing increasing use in local government -- initially to establish the spatial framework for other data (e.g., section corner locations), but increasingly as a means of generating data directly for a GIS. For example, GPS and field data loggers (hand-held computers) can be used to determine location of infrastructure such as manhole covers or environmental features such as wetland edges.

1.2 GIS Data

Virtually anything existing in the real world could be incorporated in a GIS, certainly any physical features relevant to local planning. This section reviews some of the data that would typically be incorporated in a local planning effort, both in ideal terms and what is or may be soon available in Wisconsin. For many of these data sets, consistent data do not exist throughout the state. For any particular jurisdiction, it will be necessary to investigate what exists and in what form.

Useful starting points for learning about the availability of GIS data include:

County land information offices (described in the next section about the Wisconsin Land Information Program); a listing can be found at <http://badger.state.wi.us/agencies/wlib/lios-72.html>

State Cartographer's Office (call 608/262-3065) or visit their web-site at <http://feature.geography.wisc.edu/sco/sco.html>

Wisconsin Land Information Clearinghouse (WISCLINC) at <http://badger.state.wi.us/agencies/wlib/sco/pages/wisclinc.html>

Wisconsin Department of Natural Resources, Geographic Services Section, at <http://www.dnr.state.wi.us/org/at/et/geo/>

1.2.1 Land Ownership

A major deficiency in past planning efforts has been the lack of complete and up-to-date information about land ownership. The public will always want to know how their land will be affected by policies with a spatial component, such as zoning, development districts, and so forth. Similarly, planners should be aware of who is being affected by policies.

Two records of land ownership typically exist at the local level -- a deeds registry and a tax roll. These are typically, though not exclusively, kept by county governments. In many counties, these two types of records are not fully reconciled with each other, nor were they easily accessible in a form useful for planning before the push for "land records modernization" of the Wisconsin Land Information Program. Maps generated for taxation purposes are often adapted for general land ownership purposes.¹ These range from very coarse "plat maps" at scales such as 1" = 1 mile, that have been scan digitized, to much more detailed and spatially accurate data generated directly from legal descriptions at scales such as 1" = 100 to 400 feet. Many counties have automated parcel maps generated decades ago; others have started their data automation process anew.

For most planning processes, any land ownership data is better than none. Spatial accuracy is not as important a criterion as whether the data are complete and up-to-date. Of course, data will need to be reasonably accurate if they are also going to be used for regulatory purposes or legal determinations.

Currently, a wide range exists in the

Guide to Community Planning in Wisconsin

status and type of ownership data available in counties. As detailed in the next section, the best bet is to contact the county Land Information office to learn the status for any given area.

1.2.2 Base Map

In traditional cartography, the base map was a map that provided a framework for compilation of other thematic data. At a local scale, this would typically include public land sections and quarter sections, jurisdictional boundaries, roads, lakes and streams, and possibly building footprints for large buildings. Some GISs have translated this concept directly -- building on layers such as boundaries, transportation, and hydrography as a base framework. Other systems are built on the notion that coordinates supplant the need for an explicit base map. Either approach can work, though in the latter, the system should also include layers such as transportation, hydrography, PLS, and jurisdictions. In either case, a GIS should be built on a documented coordinate system in a map projection tied to a geodetic datum (it is vital that someone involved in the use of the system understands what this means!).

1.2.3 Land Use

Information about land use is critical for effective planning. Land use is defined as the human use of land, for residential, commercial, industrial, institutional, agricultural, and forestry. For some purposes, it is important to distinguish this from "land cover" -- the material at the earth's surface, such as lawns, parking lots, rooftops, row crops, and oak woods. The former is relevant to policy decisions such as zoning, development, permits, etc. The latter is more typically part of resource management analyses such as non-point source pollution or wetlands protection efforts.

Land use data typically originate with interpretation of imagery such as aerial photography, often supplemented by "ground-truthing" -- on the ground verification. This can be an expensive process, particularly since planning and land use management are the primary users of such data (unlike parcel data that has many uses). Expenses specifically attributed

to planning may be reduced if the imagery is acquired as part of an orthophoto² program. This imagery and the associated digital elevation data will have multiple users within and beyond local government.

Land use data are typically compiled on a parcel or base map. The system should be designed to accommodate multiple land uses within a single parcel, however, preferably as spatial subdivisions of parcels. As an alternative, land use may be determined "on the fly." The GIS may include digital orthophotography that is interpreted as needed. The advantage of this approach is in eliminating the expensive data layer creation process -- interpretation, verification, and automation. The disadvantages include losing the ability to update a layer as changes occur (being tied to the land use as of the date of photographic acquisition) and losing the ability to do analyses such as "non-complying uses," an overlay of land use and zoning to determine discrepancies.

No statewide layers of land use exist currently. However, a joint effort of several state and federal agencies known as WISCLAND has resulted in a statewide land cover layer from Landsat satellite imagery. Specifications called for mapping patches of land cover as small as one acre. By making some assumptions, these data could provide a useful indication of land cover at county to regional scales. More information is available at on the Internet at <http://www.dnr.state.wi.us/org/at/et/geo/wiscland/index.htm>

1.2.4 Zoning

Zoning, in its various forms, is one of the more important tools in local land use planning. Where zoning follows parcel boundaries, it is a straightforward derivative of a land ownership layer. Zoning is essentially one of many "attributes" of the parcel. For a zoning layer, this information can be digitized from existing maps, or updated in a data attribute of parcel data as a result of ordinance changes, grants of variance, and other actions.

Overlay zones, however, are created from features that fracture parcel boundaries, such as wetlands, floodplains, and so forth. Overlay

Guide to Community Planning in Wisconsin

zoning translates directly into an GIS operation. When suitable such as wetlands or floodplain maps are automated, they can be superimposed on a parcel layer to show the extent of these special zones. Or, they can be integrated through an overlay operation into a single *zoning* layer. The GIS also provides the basis for generating special zones of concern, such as shoreland/wetland zones, through a "buffer" operation. As zoning is a local activity, there are no statewide sources or standards governing the GIS aspects of zoning data.

1.2.5 Hydrography

The abundance of lakes and rivers in Wisconsin and their importance in many aspects of land use planning makes an accurate representation of these features very important to a successful GIS. United States Geological Survey topographic maps are a common source of this information. The Wisconsin Department of Natural Resources (DNR) is automating these, providing a standard data set throughout the state. They will be linking this geographic representation to their "master water body code," providing a link to many additional data sets concerning water quality, quantity, management, fishery resources, boating activities, and so forth. If local governments need greater accuracy in the delineation of water features, they will have to obtain new source material such as digital orthophotos.

In addition to the usual position of water features, planning must also account for concerns of water quantity, specifically flooding and shoreline erosion. The Federal Emergency Management Authority (FEMA) publishes floodplain maps that provide a general indication of flooding hazards. These are used for regulatory purposes, though jurisdictions prone to flooding may want to consider investing in maps and/or GIS data bases of greater accuracy, rather than automating the FEMA maps and perpetuating known limitations. The DNR Division of Water has conducted some projects demonstrating the value of more detailed and accurate floodplain mapping. Some counties, particularly along the Lake Michigan coast, have ordinances designed to

protect structures from shoreline erosion. The "buffer" function in GIS provides a quick way to see the extent of setback regulations once the shoreline or high water mark is established.

Wetlands might be considered a hydrographic feature, but because of their special regulatory significance, data about wetlands are typically managed in a separate GIS layer. The Wisconsin Wetlands Inventory (WWI), created by the DNR, is the basis for most wetlands data bases. These data are available in digital form from the DNR. However, it should be noted that the regulated wetlands are not precisely the same as the WWI. Counties and municipalities have adopted versions of WWI, but these have been modified and amended at the local level through the intervening years. Few counties have an accurate digital map of the actual regulated wetlands; the changes are noted as text in ordinances and records of variances.

1.2.6 Topography

The shape of the earth's surface, including factors such as slope, drainage, and landscape position can be very important considerations in planning. Some regulations have been designed around criteria such as slope or proximity to drainage features. In a GIS, topographic data is typically managed as a "digital elevation matrix" (DEM) or a "digital terrain model" (DTM) often derived as part of the process to create orthophotography. DEMs or DTMs are not consistently available throughout the state. These are generated on a county-by-county basis, sometimes in cooperation with the United States Geological Survey and sometimes independently by the county government. The Wisconsin State Cartographer's Office maintains a status list of data such as DEMs and aerial photographs available irregularly throughout the state.

1.2.7 Imagery

Aerial photography provides a very useful snapshot of land use and resource conditions. It is also a rapidly mobilized source of data in emergencies, such as floods and wildfires. However, because of distortions inherent in aerial photography, these cannot be used directly in a

Guide to Community Planning in Wisconsin

GIS. Instead, derivatives known as orthophotos must be generated. This is increasingly done with scanned photographs, resulting in *digital orthophotographs*. Digital orthos can be viewed directly in a GIS. These can be interpreted for conditions such as land use or they can be used as a base map, providing locations of features such as roads, buildings, and even property occupation boundaries. Although orthos can be quite expensive to produce, they are such versatile products that about three-fourths of Wisconsin now has relatively recent data.

For some kinds of applications, particularly those covering extensive areas, satellite imagery may also provide suitable data. The WISCLAND program has now provide statewide coverage of land cover information. Unfortunately, only the derived land cover information is available; the raw Landsat satellite imagery that might be used for displays and other purposes is restricted by license agreement from further distribution.

1.2.8 Soils

Soils can be an important factor in some kinds of land use decisions. Modern detailed soil surveys have been published throughout the state except for a handful of counties. About half the counties now have these data in a digital form suitable for use in a GIS. The state office of the Natural Resources Conservation Service (NRCS) continues to work cooperatively with counties in this effort. Inquiries about data should be directed to county Land Conservation Departments or local offices of NRCS.

1.3 Wisconsin Land Information Program

In 1989, the Wisconsin Land Information Program (WLIP) was created to provide a mechanism for local land records modernization and coordination of state agency GISs. Through a segregated fee collected for transactions in local deeds registries, the program has provided about \$30 million to local units of government for GIS and related land information technology implementation. Considerable additional

investment has been made by most counties. The policy and administrative arm of the Program resides with an oversight board (Wisconsin Land Information Board) appointed by the Governor. It is served by a professional staff in the state Department of Administration. The new Wisconsin Land Council is served by the same staff and executive director.

The program is based on eight "foundational elements," which include many of the data layers described above, plus education and inter-governmental cooperation, so necessary to effective planning as well. The main components of the program include:

- County Land Information Offices -- providing for local administration of the program, and in many cases, "one-stop-shopping" for spatial data;

- County-wide plans for "Land Records Modernization" and state agency "Land Information Integration Plans;"

- State Clearinghouse for Land Information and Land Information Systems -- a central inventory of land information and land information systems;

- A Grants-In-Aid to local government program -- to assist local units of government with land records modernization (primarily but not exclusively, at the county level);

- Technical assistance to state and local government.

The program is also fostered by a nonprofit professional organization -- the Wisconsin Land Information Association. WLIA provides a forum for education, standards development, and interaction between local staff involved with land records. Many sessions at quarterly meetings and their annual conference deal with the use of GIS in land planning. Importantly, the WLIA also plays a "watchdog" role, ensuring that the WLIP remains an efficient and effective mechanism for providing benefits of land information technologies for use at the local level.

Wisconsin is blessed with having such a progressive program for land records

Guide to Community Planning in Wisconsin

modernization. Local planning efforts should benefit substantially from having a broad base of expertise and data for this and related applications. In many communities, direct links between planning efforts and the county Land Information Office will be beneficial.

Guide to Community Planning in Wisconsin

2. Population, Housing, and Employment Data

One of the most important studies in a planning process is an analysis of the existing demographic information about a community and projected changes in population, households, and employment. Demographic forecasts touch almost every element of the planning process.

First, forecasts help articulate expectations about the future. Is the community expected to grow or not?

Second, forecasts can help a community better understand some of the forces affecting community growth and change. What is the spatial distribution of the population? What is happening with employment trends? The growth or decline of employment in a community is a major determinant of housing needs.

Third, forecasts quantify assumptions about future growth. How much is the community expected to grow? How many new households will be created?

Fourth, forecasts can be used to test alternative models of future growth for various impacts. For example, forecasts are important in some methods of fiscal impact analysis. Forecast information can also be depicted as a GIS generated map showing the location of past, present and future projected development activity in the community.

Finally, forecasts are critical components of the sizing and staging of capital facilities or programs (sewers, water, roads, police and fire, etc.) For example, how big should the community expand its wastewater treatment facilities? What is needed now, what will be needed 10, 20 or 40 years from now?

Often planning processes or revisions to plans are scheduled around the availability of the decennial census data available from the federal government. The planning processes can take advantage of the detailed data compiled from the census. Forecasts are based on census information. Planning must recognize the realities of the present and the needs of the foreseeable future. Population forecasts may project 5, 10, 20

or 40 years into the future. However, forecasts of population trends over a shorter time frame can be estimated with greater accuracy than over a longer period. Regional forecasts also tend to be more accurate than forecasts made for a single jurisdiction. Communities need to understand where they fit within the integrated economic unit of the region.

Population change drives future community needs. Communities that are experiencing quickly increasing population should not plan for zero growth. It is not realistic to think that such a trend can be completely halted. A community that plans for zero growth in such a situation will likely be left with inadequate capital facilities in the future. Likewise, a community experiencing population loss should not plan for rapid future growth; expenditures on new facilities are likely unwarranted. Forecasting can help communities avoid making expensive and unnecessary investments.

Unfortunately, many communities make costly decisions about their futures without considering population or economic forecasts first. Plans need to reflect the needs of the community's existing and projected populations. Plans also need to reflect the employment needs and realities of existing and planned economic growth.

Population forecasts are important to many parts of the planning process. Forecasts will be referred to repeatedly as the process moves forward. However, forecasts have certain limitations. For example, forecasts are often based on recent trends that may or may not continue as conditions change. Nevertheless, forecasts remain one of the most important planning tools. The best forecasts need the input of local planners who know the community.

A methodology called "cohort-survival" is the most commonly used basis of population forecasts. It follows the analytic approach used in developing estimates of national growth. The method is executed on a high-speed computer using matrix algebra operations which makes it very technical and complex. Estimates are available from a number of sources, as discussed below. Communities may also need to hire an experienced analyst to develop estimates.

Guide to Community Planning in Wisconsin

Communities should keep track of their own population and housing estimates on an annual basis. This information should be incorporated into the planning process.

Where to Find Demographic and Economic Data

Two sources for population and economic data and forecasts are Wispop, an online demographic service supported by Wisplan, a University of Wisconsin-Extension program; and the State Departments of Administration and Workforce Development. Many of the regional planning commissions also prepare population forecasts.

Check with your regional planning commission to see what information it might have on population and economic forecasts for your community. The addresses and phone numbers of the regional planning commissions are included in Appendix 1.

Wispop is an interactive information retrieval system that contains thousands of demographic and economic variables for the state of Wisconsin, its counties and municipalities³. Data categories found in the Wispop system include:

- Population
- Housing
- Income and Poverty Status
- Labor Force
- Business and Industry
- Government, Crime, and Police
- Health and Vital Statistics
- Agriculture

Wispop was originally designed as a resource for Cooperative Extension agents and specialists. The service is available to communities, generally at some cost.

Persons not associated with the University of Wisconsin may gain access to Wispop data in three ways:

1. Contact your local Cooperative Extension County Office, which charges a fee for its

services.

2. Contact the Applied Population Laboratory at (608)262-1515. There is a charge for this service.

3. A community can also become an external user for a fee. Call Wisplan at (608) 262-4552.

For information about Wispop, visit its website at: <http://www.uwex.edu/ces/wispop>

The State of Wisconsin also provides demographics and economic data and forecasts.

- Population Estimates and forecasts by County and Municipality with voting age and zip code estimates (Wisconsin Department of Administration)

<http://www.doa.state.wi.us/deir/boi.htm>

For information call: (608) 266-8234

- Labor Market Information from the Department of Workforce Development. Note: this site contains more current Local Area Unemployment Statistics than does Wispop

<http://www.dwd.state.wi.us/dwelmi/>

For information call: (608) 266-3131

These sources can provide communities with the kind of numbers they need to create appropriate plans for their futures.

Guide to Community Planning in Wisconsin

3. Land Supply/Demand

After a community has an idea of future population growth or loss, it can analyze what the implications of that future population growth or loss will mean for land consumption. Plans to manage growth need to include an accurate estimate of land required to accommodate future growth.

The planning process should convert forecasts of population and employment into requirements for land “need” or demand. This conversion involves a variety of factors. It is necessary to convert population forecasts into forecasts of households (both single-family and multi-family) which the community will add during the future planning horizon (often 10 or 20 years). The number of houses and other dwelling units that need to be built is a better indication of future land needs than population. Average household size (how many people per dwelling unit) will be a determinant of how many houses are needed to house the projected population growth. Household size will probably vary by community. Generally, household size has declined over the years.

Communities also need to calculate residential densities (how many dwellings per acre). This figure will be different for single-family and multi-family dwelling units. The density figure will allow the community to project how much land will be consumed to develop the projected growth in households.

In addition to understanding land demand needs for residential growth, communities need to understand land demand needs for other types of uses. Land demand needs for commercial and industrial uses can be calculated in a variety of ways. One way is to calculate the average square feet of commercial or industrial uses per employee. This figure will vary according to the type of business. Such a calculation will allow the community to estimate the amount of land needed for expansion of commercial and industrial uses based on projected employment growth.

Communities should also calculate public land needs. For example, based on forecasted growth, how much park land will the community

need to add to maintain existing levels of service? What do the community’s capital facilities plans say about additional public facilities, such as roads and parks, and how much land will be needed by these facilities?

Besides to understanding land demand issues, it is also important to understand land supply issues. How much land is available in the community for future growth? An analysis of land supply often includes an inventory of vacant land within the community. For example how many acres of undeveloped land within the community are zoned for single family use, multi-family use, and commercial/industrial uses. Geographic information systems can be an important resource for determining the amount of vacant land.

A vacant-land inventory must take into account lands that are unsuitable for development because of environmental concerns, such as wetlands, floodplains, outcroppings of bedrock, etc, which may make an area unbuildable. The vacant land inventory must also recognize the redevelopment capability of a community. How much of the projected housing demand will be accommodated in developed areas by conversion, redevelopment, and infill.

A community can use the land supply and demand information to adjust existing capacities to handle growth and to guide future decision making. For example, a community may forecast that over the next 10 years it will add 700 units of single family residential units that will need 175 acres of land. If the community currently has a supply of 100 acres of land, it will need to look at strategies to accommodate that growth. The strategies may include increasing the density of residential development and/or rezoning additional land for residential development. However, if the same community has 500 acres of developable land for residential purposes, there is probably no justification for rezoning additional land for residential development.

Understanding land supply and demand will allow the community to better plan for the provision of future services, primarily water, sewers, and transportation. Communities should not plan for more than they can reasonably expect the market to bring them. Planning for overly

Guide to Community Planning in Wisconsin

optimistic growth can lead to increased community costs, scattered development, and unrealized expectations. However, the plan should establish a process by which growth trends are monitored so that plans can be modified, if appropriate, to reflect unanticipated trends.

Land supply and demand analysis is an integral part of many planning processes. Calculating land supply and demand can be very complex and time consuming. Many variables need legitimate recognition as part of the analysis. These variables include environmental constraints and the need to place an individual community into the regional development context.

Guide to Community Planning in Wisconsin

4. Fiscal Impact Analysis

The purpose of fiscal impact analysis is to estimate the impact of a development or a land use change on the costs and revenues of governmental units serving the development. The analysis is generally based on the fiscal characteristics of the communities (e.g., revenues, expenditures, land values) and characteristics of the development or land use change (e.g., type of land use, size of development). The analysis helps local governments estimate the difference between the costs of providing services to a development and the revenues--taxes and user fees, for example--that will be collected due to the development.

Fiscal impact analyses can be used as a planning tool to project the fiscal consequences of alternative development scenarios. The analysis allows for a realistic examination of the viability of a specific development proposal, helps in evaluating alternative development proposals on a fiscal basis, aids communities in negotiations with developers, and helps in evaluating more general planning efforts and growth management strategies. The information provided by fiscal impact analyses can aid local governments in managing during changing fiscal times by anticipating and planning for future financial costs.

There are two basic approaches to assess the cost of governmental services that growth imposes on a local unit--average costing and marginal costing. Average costing is the more common procedure. It attributes costs to new development or growth according to average cost per unit of service times the number of units the growth is estimated to require or the demand for that unit. It does not take into account excess or deficient capacity, as does the marginal costing procedure. The average costing approach assumes that average costs of municipal services will remain stable in the future. Marginal costing relies on analysis of the demand and supply relationships for public services. Marginal costing views growth not in a linear manner, but as a more cyclical process concerning the impact on expenditures.

The distinction between average and

marginal costing is fundamental to fiscal impact analysis. Marginal and average costing approaches may result in dramatically different estimates of fiscal impacts for the same development. This is due to the "lumpy" nature of certain public services, like sewage treatment plants and water supply systems. When such facilities are built in a community, they are typically financed with long-term debt and built with the expectation that they will also serve future population growth in the community. Therefore, the incremental cost of providing the service to one more resident is low.

However, these facilities do have a threshold level where surplus capacity is eventually depleted. It is at this point that the new development or new growth requires new infrastructure investment and the marginal cost of serving a new resident may actually be higher than the average cost. The marginal cost approach focuses on defining a community's marginal response to a new development or land use change through careful attention to existing demand and supply relationships in a community.

There are a variety of approaches to fiscal impact analysis. Six standard approaches are explored below.⁴ Three represent average costing techniques--per capita multiplier, service standard and proportional valuation. The remaining three represent marginal costing techniques--case study, comparable city and employment anticipation.

The average costing methods are appropriate if the services a municipality provides are close to the level of demand, in which case an assumption can be made that future costs are a reflection of current costs. If excess or deficient capacity exists, marginal techniques are more appropriate to assess fiscal impacts. The simpler average costing techniques are appropriate for smaller developments or several development proposals. Larger or unique developments require the use of a marginal costing technique. Multiple methods may be used to check the accuracy of another method or methods. The results obtained from use of a marginal cost approach are more likely accurately to reflect annual needs and therefore will be more useful. Although in the end, the two different techniques may produce

Guide to Community Planning in Wisconsin

similar results.⁵

Although the techniques differ in their application, there are four basic procedures that are common to all. All techniques determine the population generated by growth--persons, school-age children and employees. In addition, all techniques translate population into public service costs. The techniques also project revenues induced by growth using various approaches. Finally, the techniques compare development induced costs with revenues. If costs exceed revenues, a deficit is incurred, and if revenues exceed expenditures, a surplus is realized. The techniques differ mainly in how population is translated into public service expenditures.

The following sections detail the six different techniques to fiscal impact analysis. The final section highlights the shortcomings of fiscal impact analysis as a general tool to examine the effects of growth and development.

4.1 Case Study Approach

The case-study approach, a marginal costing method, assumes that every community is unique. The basic data needed to use the case study method come from estimates made by the local municipal employees, obtained through interviews. They detail the specific personnel and capital equipment necessary to accommodate proposed development. The case study method assumes that department heads and other municipal and town officials can provide the most accurate information regarding questions of service extensions or retrenchments due to development. The case-study approach is more precise than average costing methods because it specifically examines the question of whether the public service delivery system in place before the development is in sync with demand or whether it is over- or under-used.

A case study method includes the following steps:

- ① Contact key local officials and staff to elicit their support for the project.
- ② Disaggregate budgets into categories of service expenditure, such as general government, public safety,

public works, health and welfare.

- ③ Project population and student increases associated with the development.
- ④ Interview local officials and staff to determine existing deficient or excess capacity in local services and to determine how their departments will respond to growth, given the information on excess and deficient capacity and the estimate of population associated with the development.
- ⑤ Project costs that will be incurred because of manpower and service expansions detailed by local staff and officials.
- ⑥ Project revenues to be generated by the development.
- ⑦ Compare estimated costs with revenues to determine the net fiscal impact of the development on the community.

The case-study approach has several drawbacks. It is costly and more time consuming than the other methods of fiscal impact analysis. The results of a case-study analysis are highly dependent on the officials approached and the types of questions asked of them. Interviews are verbal reports and are subject to bias, poor recall, and poor and inaccurate answers.

4.2 Per Capita Multiplier Approach

The per capita multiplier approach is a widely used average costing approach for estimating fiscal impacts. The approach uses demographic and budget data to estimate municipal service costs on a per capita basis. The calculation is straightforward. All residentially-induced expenditures and selected revenues are divided by the current population in the community. The per capita service costs and the per capita revenues are then multiplied by the population change associated with the development, to derive the increase in costs. Non-residentially induced expenditures and revenues are divided by current employment to calculate per employee costs and revenues.

These multipliers are then applied to new workers resulting from the development. Residentially induced value is computed as the average of the residential proportion of total value and total parcels in the community, and non-

Guide to Community Planning in Wisconsin

residentially induced value is the remainder. The proportion of value residentially-induced is used to estimate residentially-induced costs and revenues.

If the population associated with the development is unknown, the fiscal analyst uses demographic multipliers to predict population change. Multipliers allow for a calculation of the two principle categories of uses for public services--people for municipal services and school-age children for school services. Demographic multipliers vary according to the type and size of housing units--single family homes, town homes, garden apartments--and size is expressed by the number of bedrooms. Applying household size and school children multipliers for different type and size developments yields a development-induced population estimate.

A per capita cost analysis involves the following steps:⁶

- ❶ Disaggregate budgets into categories of service expenditure, such as general government, public safety, public works, health and welfare.
- ❷ Determine the population and employment changes associated with the development.
- ❸ Calculate the proportion of municipal costs for residential facilities based on the proportion of their value to total real property valuation and their parcels to total parcels, deriving a net service expenditure estimate (residentially-associated).
- ❹ Calculate the non-residential portion of municipal costs which is the difference between total costs and residentially associated cost.
- ❺ Divide net expenditures (residential) by total population. This is a per capita estimate of municipal service costs. Per capita estimates can be calculated for each category of expenditure. Divide nonresidential costs by local employees for a per employee estimate of nonresidential service costs (this assumes that employment intensity generates public service costs).
- ❻ Calculate the residentially-induced costs associated with the development by multiplying the per capita estimate of current service costs by the population increase.
- ❼ Calculate nonresidential costs associated with development by multiplying the per employee estimate of

service costs by the employment increase associated with the development.

- ❽ Estimate revenues to be generated by development.
- ❾ Compare estimated revenues and costs associated with the new or proposed development and determine the net fiscal impact on the community.

The approach makes several simplistic assumptions. It is based on the premise that expenditures and revenues increase proportionately with population. Furthermore, it assumes current service levels are expected to continue on the same scale and the current distribution of expenditures in the community is expected to continue into the future. A constant level of service is expected to be maintained over time. Under the per-capita multiplier approach, there is no allowance made for economies or diseconomies of scale. Furthermore, the approach assumes that the current population composition suggests future population composition.

Average cost assumes that each new resident generates the same costs as prior residents. This is not necessarily true for public services. Many public services have a steady or slightly declining cost per unit up to the point where full capacity is reached. At that point, one additional person can cause a significant expenditure increase, for example, for a new water treatment plant. In the case where there is excess capacity in a municipality, the use of average costs tends to overestimate costs of development.

Reliance on current per capita expenditures to measure the impact of growth on local government expenditures may underestimate the spending associated with growth.⁷ A recent study illustrates that per capita costs increase with population growth. The study of 248 large U.S. counties found that rapid population growth is associated with large increases in public spending, especially in the areas of transportation and interest on general debt. The research suggests that rapid growth may increase per capita spending because of changes in the density of development, changes in levels of service provided, and higher per unit costs associated with an influx of new residents.

Guide to Community Planning in Wisconsin

Technique in Action

The Wisconsin Taxpayers Alliance relied primarily on the per capita method in their estimation of the increase in public service costs associated with a proposed annexation in Wisconsin. The proposed annexation included over 2,000 persons, and the Alliance concluded that the annexation would result in an increase of expenditures in the city of \$3.8 million, resulting in a significant increase in the city tax rate.

4.3 Proportional Valuation Method

The proportional valuation method relates increases in community revenues and expenditures, not to population growth, but to development in a more general sense. Specific expenditures and revenues are initially allocated to residential and non-residential uses. Often, this allocation is based on the composition of residential and non-residential development in a community. Costs and revenues are allocated to residential, commercial and industrial land uses in proportion to the share each represents of the total property base as reflected in property value. However, costs and revenues are also allocated differently in fiscal impact studies. For example, police costs may be allocated according to how many police calls originate with residential versus commercial and industrial properties in the community. After costs and revenues are allocated, a current cost per acre by land use type is estimated and this is then applied to the development. Like the per capita multiplier method, this is an average costing approach.

The basic steps for estimating fiscal impacts of development using the land use multiplier approach are:

- 1 Disaggregate budgets into service categories. For example, police and fire, building inspection, health and social services, highways, sanitation, parks and recreation, construction and development, indebtedness, and general government.
- 2 Calculate the percentage of costs in each service area attributable to different land use types. Costs may be

allocated across land uses based on relative property valuation.

- 3 Multiply these percentages or land use coefficients by the appropriate level of costs and divide this product by the number of acres in each land use type. The results are costs per acre of providing each service by land use type.

- 4 Estimate fiscal impacts in terms of costs by multiplying the cost per acre by the land area associated with the development.

- 5 Estimate revenues associated with development.

- 6 Compare estimated revenues to costs to determine the net fiscal impact of the development on the community.

The proportional valuation method also has several underlying simplistic assumptions. It assumes that costs increase with the intensity of land or as land is more developed, and that changes in property values are appropriate proxies for changes in the intensity of land use. It also often groups industrial and commercial development into to one land use category, thus assuming that impacts on these two different types of land use are similar.

Technique in Action

This approach to estimating fiscal impacts is illustrated by recent projections of the fiscal impacts of annexation for a Wisconsin town.⁸ The analysis relied primarily on the proportional valuation method for a 107 acre annexation. The annexation included both residential and commercial development. The study concluded that the annexation resulted in a net fiscal benefit to the town losing territory due to the increase in intergovernmental revenues realized by the town with the loss of land. The Wisconsin state shared revenue formula is designed to provide tax base equalization, so as the town lost tax base, its share of state shared-revenues actually increased allowing the town to realize a net benefit.

Guide to Community Planning in Wisconsin

4.4 Service Standard Method

The service standard method is also an average costing technique. Under this method, the impact of development is estimated by using average employment levels by service category and a ratio of annual capital-to-operating expenditures. Specifically, the analyst determines the total number of additional employees by service category that will be required because of growth. Additional employees are estimated using service ratios obtained from various sources, including the U.S. Census of Governments, for communities of different regions and sizes.

For instance, a service ratio of 2.5 police officers per 1,000 population may be the service standard used to estimate additional police officers necessary to serve the development. Operating expenses per employee are then calculated based on local budgets and current operating expenses per employee. Capital costs associated with each employee are calculated by multiplying capital-to-operating expenditure ratios by annual operating costs.

Steps for the service standard method are:

- ① Determine the population increase resulting from the proposed development.
- ② Using service ratios for communities of various sizes in different regions, project the number of additional employees necessary to accommodate the development.
- ③ Disaggregate budgets into service functions and calculate average operating expense per employee by function by dividing total operating expenses by function by the total number of employees in that service category.
- ④ Project annual operating costs by multiplying average operating expenses per worker by the number of new employees associated with the development.
- ⑤ Project total annual capital costs associated with the development by multiplying capital-to-operating expenditure ratios by total annual operating costs.
- ⑥ Project total costs by adding operating expenses to capital expenses associated with the development.
- ⑦ Estimate revenues associated with the development.
- ⑧ Compare estimated costs to revenues to determine the net fiscal impact on the community.

This method rests on a number of fundamental assumptions. Average existing service levels for personnel and capital facilities of comparable cities are used to estimate costs of development. This approach assumes that over the long run these measures are good approximations to be used to assign costs to future development. To the extent that actual local performance differs from these averages, the technique may either over or under estimate true costs.

4.5 Comparable City Method

The comparable city method is a marginal costing technique. It relies on expenditure multipliers that account for the fact that facility and service costs vary depending on the size of a community and its rate of growth. The analysis uses a series of multipliers to estimate the costs of a proposed development.

The multipliers represent a proportional ratio of the average expenditures by function of communities of various sizes with various growth rates to the average expenditures by function of communities of the most common population size and growth rate. Per capita expenditures are generally lower in smaller communities and increase as the rate of growth increases. As a community grows with new development and additional population, its expenditure pattern is characterized by a different expenditure multiplier. The ratio of the new multiplier to the old multiplier is multiplied by the existing per capita expenditures by function to estimate the new local municipality costs due to the development.

The steps for the comparable city method are:

- ① Determine the population and student growth associated with the new development.
- ② Determine the community's current expenditure multiplier, based on current population and the growth rate. Using the population projected in Step 1, determine the future expenditure multiplier and the rate of change in these two multipliers.

Guide to Community Planning in Wisconsin

- ④ Determine the current per-capita operating and capital costs for major expenditure categories.
- ⑤ Project future per-capita costs by function by multiplying the current per-capita expenditures by the multiplier rate-of-change ratios.
- ⑥ Calculate total future costs by multiplying per capita costs by future population. The cost attributed to the new development is the difference between what costs will be in the future and what they are today.
- ⑦ Estimate revenues associated with development.
- ⑧ Compare estimated costs to revenues to determine the net fiscal impact.

The comparable city method is an inexpensive and straightforward technique, but it too rests on several basic premises. The method assumes that local expenditures associated with development will parallel the patterns of other communities with similar growth rates and of similar size. If local performance differs, use of the average expenditure will either over or under estimate costs.

4.6 Employment Anticipation Method

The employment anticipation method is a marginal costing technique used to project the impact of industrial or commercial developments through examination of the relationship between employment and per-capita expenditures. Cost coefficients based on regression analysis have been developed for a number of standard categories of expenditures to allow analysts to estimate the increase in public expenditures given a specified increase in the number of employed persons in the community. The coefficients or multipliers were developed for categories of cities based on population size and direction of growth. The multipliers, known as employment anticipation multipliers, are interpreted as, "a change in one employee in the community will result in an increase in per capita local expenditures of X percent."

The employment anticipation method requires:

- ① Determine the number of expected employees associated with development.
- ② Disaggregate budgets into service functions and determine per-capita expenditures by function
- ③ Based on population size and direction of growth over the previous decade, choose the applicable employment anticipation multiplier that estimates the per-capita change in expenditure per employee.
- ④ Multiply the number of new employees by the multiplier to determine the total percentage increase in costs per employee for each service category.
- ⑤ Multiply the percentage increase in per-capita expenditures by category by the existing per-capita expenditures in that category to determine the dollar increase per capita for each service.
- ⑥ Multiply the increase in per-capita expenditures for each service category by the existing population to determine the cost increase associated with the new development for each service. Total the expenditure increases for each service to obtain total costs associated with development.
- ⑦ Estimate revenues associated with the development
- ⑧ Compare estimated costs to revenues to determine the net fiscal impact.

The primary disadvantage of this approach is that it relies on coefficients to calculate changes in per-capita local expenditures for categories of municipalities as defined by both population size and direction of growth. So, a single multiplier is used for all cities within a specified population category. These groupings may limit the results of the analysis. For example, a single multiplier is used for a wide range of cities, so the same development may be shown to be significantly more costly in a city of 149,000 than one in a city of 100,000, due only to the grouping technique.

4.7 Revenue Estimation

The previous discussion highlights the differences in each of the standard methods for projecting costs. In determining revenues associated with development, the differences are more subtle. For example, in estimating property taxes, established tax parameters are generally used under each method. To estimate property

Guide to Community Planning in Wisconsin

taxes associated with new development, the analyst determines the assessed value of the development and then multiplies this value by the prevailing property tax rate. Those revenues related to population size, like fees, fines, permits, and licenses, are typically estimated on a per-capita basis. Intergovernmental revenue is projected similarly.

4.8 The Hierarchy of Land Uses

Based on the many fiscal impact studies using the above methods, a hierarchy of land uses emerges in terms of fiscal impacts. The hierarchy considers both local costs and revenues. Position in the hierarchy reflects profitability from the local government's point of view. Those land uses that are the most profitable generate significantly more revenue than they cost a local government to serve.

Basically, land uses that place below-average demands on school services and other social services tend to generate a net fiscal surplus for a community and are placed at the top of the hierarchy. Those land uses that place above-average demands on educational services and other social services tend to result in a net fiscal deficit and fall to the bottom of the hierarchy. The hierarchy generally extends from research parks at the top to mobile homes at the bottom.

While precise results vary from study to study, there are types of development that consistently generate more revenues than costs. Residential developments generally impose net costs on communities and non-residential developments generate net benefits. This is due to the assumption that residential developments require more public services like protective services and traffic control. This means that lower rent apartment buildings and larger housing units tend to result in fiscal deficits. Office parks, research parks, industrial development, and small high-rent multifamily housing tends to produce a fiscal surplus for a community.

The hierarchy of land uses is, however, silent on the overall fiscal impact of farmland. Over the past decade, analysis has emerged on the impacts of open space and farmland on a

community's fiscal balance sheet. The American Farmland Trust (AFT), for example, found that predominantly agricultural uses generate more revenue than they require in public service expenditures.⁹ These studies conducted by the AFT are not traditional fiscal impact analysis, but they are known as cost of community service (COCS) studies. The COCS approach compares annual revenues to annual expenses of public services for various land-use sectors. Local revenues and expenditures are apportioned to major categories of land use, similar to the procedure used in the proportional valuation method detailed above.

Various assumptions are made in apportioning costs across land uses, and these are often based on discussions with local staff and officials. The result is a set of ratios showing the proportional relationship of revenues and expenditures for different land uses. COCS studies across the board have concluded that farmland and open space provides more revenue to a community than is incurred in expenditures, resulting in a net fiscal benefit to a community. Findings such as these have been used to dispel allegations that residential development increases property tax revenue and that conservation is too expensive to achieve at the local level.¹⁰

In one of the first COCS studies conducted by the American Farmland Trust of three towns in Massachusetts, the revenue/service ratios for residential land uses ranged from \$1.05 in one town to \$1.15 and \$1.16 in the other two. In the first town, for every dollar generated in revenue, \$1.05 was spent on services to residential uses. In contrast the ratio for farm and open land was \$.31 in the first town and \$.29 and \$.38 in the other two. The aggregate ratio for the three towns for farmland and open space was \$.33, compared to \$.36 for commercial and industrial uses and \$1.12 for residential uses. In a more recent COCS study conducted in Pennsylvania, for every dollar of revenue generated by residential land, \$2.11 was spent on services for that land. For every dollar of revenue generated by agricultural land, \$.31 was spent on services.¹¹

Guide to Community Planning in Wisconsin

Critics of COCS studies discount them because of the assumptions underlying them. Most notably, the studies fail to acknowledge workers or residents living on farms. The costs for both workers and residents are apportioned to other land uses, namely residential. There are no costs, such as street maintenance, garbage collection, or protective services, assigned to agricultural uses. Predictably, overall costs associated with these uses will be low or nonexistent. Furthermore, the studies do not differentiate different types of open space--farmland versus vacant lots for example.

4.9 A Final Word About Fiscal Impact Analysis

Fiscal impact analysis, as an overall tool to assess impacts, has some general limitations that apply to all of the different approaches to assessing impacts. The results of any fiscal impact analysis are based on many assumptions about the allocations of costs and decisions regarding such questions as what costs and revenues to include or not include, time frame, and how values change over time.

Different assumptions about costs and revenues and land values can lead to dramatically different results. For example, one reason residential development is often found to have negative fiscal impacts and commercial/industrial uses positive impacts is because educational costs are attributed to residential uses only. Cost of Community Services studies conclude that farmland is fiscally beneficial. This is because, in these studies, costs associated with farmland are low, as it is assumed that the farm has no workers or residents. Also, different methods of fiscal impact analysis may produce different results for the same development. Because they may be based on different assumptions, providing different estimates of impacts.

Fiscal impact analysis generally considers direct impacts or only the primary costs that will be borne and the immediate revenues to be generated by growth or by a development. Secondary impacts are typically not considered in

the analysis. In reality, development has indirect or secondary effects--it may induce an increase or decrease in values of adjoining properties, for example. It may cause residents to move. Some analysts argue that secondary impacts are not considered due to the difficulty in estimating accurately the indirect effects of growth and to the potential error in terms of double counting in estimating direct and indirect impacts.

Fiscal impact analysis is only concerned with public costs and revenues. It does not detail any private costs or benefits, which may be substantial. It does not include land dedications that may be required of developers, for instance. Nor does it determine whether home prices will rise because of a recommended increase in sewer charges due to new development, for example.

Fiscal impact analysis is geographically bounded, so costs and revenues are estimated only for the local communities that are experiencing the growth or land use change. State governments, for example, are not considered in the analysis.

Lastly, fiscal impact analysis does not consider non-quantifiable costs and benefits such as aesthetic conditions and socioeconomic considerations. These variables cannot be easily accommodated into the standard models. This is a major shortcoming of the approach.

Development has impacts that go beyond the consequences to the municipal balance sheet. Environmental, social, transportation, and visual impacts of development are important and should be acknowledged in any assessment of proposed developments. Analyzing only one type of impact may not provide enough information to decide whether to allow a development to proceed.

Guide to Community Planning in Wisconsin

5. Resource Materials

FISCAL IMPACT ANALYSIS

The New Practitioners Guide to Fiscal Impact Analysis by Robert W. Burchell, David Listokin and William R. Dolphin (Center for Urban Policy Research, 1985).

Development Impact Assessment Handbook by Robert W. Burchell, David Listokin, et al. (The Urban Land Institute, 1994).

Estimating Fiscal Impacts of Residential Developments in Smaller Communities by Barry Ryan and Steven J. Taff (University of Minnesota Extension Service, 1996).

POPULATION TRENDS

The Small Town Planning Handbook (Second Edition) by Thomas Daniels, John Keller and Mark Lapping (American Planning Association Planners Press, 1995).

LAND SUPPLY/DEMAND

Urban Land Use Planning, by Edward Kaiser, David Godschalk, and Francis Chapin (Fourth Edition) (University of Illinois Press, 1995).

Guide to Community Planning in Wisconsin

6. Endnotes

1. Because of Wisconsin's quarter-quarter section based property tax assessment process for rural lands, the "parcels" of tax roles do not directly correspond to a land ownership parcel as described in a deed. GIS can play a role in aggregating tax parcels into land ownership patterns that more closely resemble deed descriptions. This can also be done directly through a process known as COGO -- coordinate geometry based generation of maps from deed descriptions.
2. Digital orthophotos are images in which the distortions normally found in aerial photographs have been removed. These can be used as both an image from which to interpret land use and a map to measure distances and observe spatial relations.
3. All Wispop information taken from the Wispop homepage, URL: <http://www.uwex.edu/ces/wispop>
4. These approaches are covered in detail in **The New Practitioners Guide to Fiscal Impact Analysis** by Robert W. Burchell, David Listokin and William R. Dolphin (Center for Urban Policy Research, 1985).
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7. Ladd, Helen. 1993. Effects of Population Growth on Local Spending and Taxes, in Structuring Direct Aid: People Versus Places, Volume 9 of **Research in Urban Economics**, ed. R.D. Norton, pp. 181-223, Greenwich, CT: JAI Press.
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9. American Farmland Trust. 1992. **Does Farmland Protection Pay? the Cost of Community Services in Three Massachusetts Towns**. Northampton, MA: American Farmland Trust.
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11. Kelsey, Timothy W. 1996. The Fiscal Impacts of Alternative Land Uses: What do Cost of Community Service Studies Really Tell Us? **Journal of the Community Development Society**. 27, no. 1: 78-89.

Chapter 5

COMMUNITY DESIGN

Chapter 5

1. Design Review
2. Traditional Neighborhoods
3. Cluster Development
4. Historic Preservation
5. Resource Materials
6. Endnotes

Understanding community design issues is an important part of the planning process. Each Wisconsin community has its own distinct character. Addressing community design issues can help to develop and maintain a community's distinct character--its "sense of place."

Most of the development in the nation has occurred since World War II. However, people are becoming increasingly critical of the pattern of development of the past fifty years which threatens the "livability" of communities.

Local communities have a number of planning options to address community design issues. Some of these options are explored below.

1. Design Review

Many communities in Wisconsin have adopted design review processes. These processes usually involve the review of individual development proposals by a special body such as the plan commission, an architectural review board, a design review committee, or a historic preservation commission.

Design review allows a community to

influence the layout and appearance of buildings and open space as an area is developed. Traditional zoning and planning only addresses community character and design in very limited and indirect ways--such as zoning that provides setback requirements. Other regulations attempt to establish standards for "aesthetic nuisances" such as junkyards.

A 1993 survey of design review practices in 110 Wisconsin communities¹ found that:

- Most communities had some form of design review including communities that had appearance regulations and those that had review for functional reasons such as safety;
- Twenty-five percent had some form of design review districts;
- Approximately 70 percent of the plan commissions conducted design review but did not have members with design credentials;
- In reviewing site design, 85 percent reviewed signs; 85 percent reviewed building placement; 91 percent reviewed building setback; and 62 percent reviewed parking lot landscaping.

With changing societal values, courts have increasingly recognized the community's need to address design issues in the public interest. Until the mid 1930's, aesthetic considerations were usually not a part of land use regulations. Between the mid 1930's and the mid 1950's, the courts began to allow aesthetic considerations in land use regulations, only if the regulations could be linked to the need to protect

Guide to Community Planning in Wisconsin

public health or safety. In the mid 1950's, both the U.S. and Wisconsin supreme courts recognized that the concept of the public welfare included aesthetics.

According to the U.S. Supreme Court, *"The concept of the public welfare is broad and inclusive... The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful..."*²

Based on this decision of the U.S. Supreme Court, the Wisconsin Supreme Court held that the zoning power could be exercised for purely aesthetic considerations. Regulation for aesthetic purposes did not have to be linked to other objectives.³

In the 1960's and 1970's, communities began to adopt aesthetic codes. These codes often regulated design concerns related to building facades, materials, and colors. The codes were generally rigid requirements. However, it proved difficult to legislate good design.

In the 1980's, communities began to explore the concept of design review processes based on design guidelines rather than detailed requirements associated with aesthetic controls. Design review attempts to be less rigid, yet more comprehensive in reviewing subject areas: overall site design, landscaping, architecture, signage, and public spaces. Instead of listing exactly what can and cannot be done, like aesthetic controls, design review has a broader orientation. It should encourage the creative application of design principles to best suit the site of the development. Design review seeks to expand choices by embracing any number of successful solutions through collaboration and accommodation.⁴

1.1 Crafting Design Guidelines

Design review processes require that the community outline the purpose for the guidelines and outline the steps of the review to improve the objectivity, consistency, and fairness of the design review process. The following points are recommended in crafting design guidelines:⁵

- Design guidelines should clearly define what each community means by compatibility with its character or harmony with existing surroundings.
- A community-wide design study should precede the determination of community character or image that is to be protected, enhanced, or created.
- Surveys of citizens' perceptions of the character or image of the community should be conducted to form a basis for design guidelines.
- Except for smaller communities, application of public design control should be limited to specially designated areas.
- Content and organization of design guidelines should be simple and focused, with clear priorities for criteria and standards, but they should not be overly specific.
- Design guidelines should include non-aesthetic standards for things like public safety.
- Descriptive design criteria and standards should be illustrated.
- The interpretation of compatibility with community character or harmony should be broad enough to include various contextual relationships.

Once developed, these guidelines can be used by a special committee designated to review development proposals to insure that they meet the spirit of the guidelines. The committee charged with design review should be small. Some members of the committee should have design experience. Members need to be able to clearly articulate what is expected of project proposers on design issues. Members also need to be familiar with the community and planning policies in general.

To be successful, design review programs need to have the support of the community. Members of the design review committee need to involve the entire community in the development of the guidelines. Members of the design review committee should also continually educate elected officials, developers, and the public about the importance of design review on the character of the community.

Guide to Community Planning in Wisconsin

2. Traditional Neighborhood Design

Community design issues and concepts also apply on a larger scale than the appearance of one building or project. Communities around the state reflect a variety of different development patterns that reflect evolving design concepts at different points of time -- e.g., the grid street patterns of the older sections of some communities, the curvilinear street pattern of communities built in the 1950's and 1960's, and the cul de sacs of the 1970's and 1980's and the dispersed development patterns of the 1990's.

Increasingly people are returning to the concepts of traditional neighborhood design, also sometimes referred to as "new urbanism" or "neotraditional neighborhoods." The concepts focus on a number of planning and design principles from the early 1900's and earlier. These principles attempt to mirror the type of community found in the older parts of many Wisconsin communities. These principles include a mixture of uses that integrate work places, commercial areas (such as grocery stores), civic spaces (such as parks and town squares) and housing (mixing housing types and sizes). The design concepts also follows street patterns based on grids or variations of grids.

Lots sizes in such developments tend to be smaller than in most conventional subdivisions so they consume less land for the same amount of dwelling units. They average five or more dwelling units per net acre instead of the one to three houses per net acre that is common in many developing areas.

Walking is encouraged with sidewalks, trees along the streets, narrow roads that slow down cars, and commercial, and parks that are located a short walk from most houses. Public transportation is also encouraged.

Four Common Attributes of Traditional Neighborhood Development

1. Neighborhood Size-traditional neighborhoods are generally limited in size to encourage

pedestrian activity. The optimal size of a neighborhood is 1/4 to 1/3 of a mile from center to its edge, a distance equal to a five to 10 minute walk at an easy pace. Its limited area gathers the population within walking distance of many of its daily needs.

2. The Street Pattern- Streets in a traditional neighborhood district are designed to accommodate the needs of all modes of transportation. The neighborhood consists of a interconnected network, like grids, of small thoroughfares. An interconnected street pattern with smaller blocks provides multiple routes, diffusing automobile traffic and shortening walking distances. This pattern keeps local traffic off regional roads and through traffic off local streets. Neighborhood streets of varying types are designed to provide equitably for pedestrian comfort and automobile movement. Sidewalks are required.

3. Mix of Land Uses- A traditional neighborhood is structured to provide a balanced mix of residences, shops, workplaces, civic uses, and recreation within the neighborhood. The integration of multiple land uses allows residents to meet more of their daily needs through shorter trips.

4. Public Open Spaces- Formal and informal open space is located throughout a traditional neighborhood. The design of the neighborhood gives priority to open space. These spaces enhance community activity, identity, and civic pride. The neighborhood plan creates a hierarchy of useful open spaces: a formal square in the neighborhood center, parks and playgrounds throughout the neighborhood, and streets that promote walking and encourage informal meetings.

The existing zoning ordinances, subdivision regulations and other land use regulations of many communities are designed for development patterns of the 1960's or 1970's. The requirements of these regulations often

Guide to Community Planning in Wisconsin

prohibit the construction of traditional neighborhoods. Often existing zoning ordinances disallow the densities that are necessary for traditional neighborhoods. The ordinances also generally preclude the introduction of different uses in neighborhoods.

A “planned unit development” (PUD), discussed in Chapter 6, is one tool available to communities which is intended to provide more flexible land use controls to allow traditional neighborhood design. Other tools, such as subdivision regulations and design review, can be used to shape new development in such a way as to promote the traditional neighborhood design.

Guide to Community Planning in Wisconsin

3. Cluster Development

Another community design concept is cluster development, also referred to as “conservation subdivisions.” Cluster development involves the grouping of all residential structures in a new subdivision on only a portion of the available land.

The concept of cluster development, as a pattern of human settlement, has been around for centuries. In Wisconsin, the Village of Greendale, a suburb of Milwaukee, is an example of cluster development dating from the 1930's. A number of other developments in the suburban Milwaukee area are based on the cluster design concept. Some date from the early 1960's.

Increasingly, people are looking at the use of cluster development in rural areas where farmland, ecological resources, and open space are in need of protection. The practice of clustering the development reserves a significant portion of the site as protected open space.

Communities interested in encouraging cluster development should review their plans and zoning and subdivision ordinances to develop design standards for cluster developments, such as standards for open space. Cluster developments generally follow a similar review and approval process as traditional subdivision approvals, as discussed in Chapter 7.

Cluster development can be a mandatory requirement for development in a community or it can be a voluntary alternative to traditional subdivision design. In places where cluster development is voluntary, communities can provide incentives for developers to do clustering. A common incentive is the density bonus. Density bonuses allow the developer to add a number of units to the development in return for clustering. If the developer would be allowed 15 dwelling units for a conventional subdivision, he or she might be allowed to develop 20 dwelling units as a bonus for using the clustering method.

However, density does not always have to increase for cluster development to work. A developer can receive the right to build the same number of dwelling units with cluster development as with a conventional subdivision. What changes

is the lot size. For example, if a land parcel is 50 acres in size, and the minimum lot size is two acres, the developer can create a conventional subdivision of 25 lots of two acres each. With cluster development, the developer is allowed to develop the 25 lots, but the minimum lot size is decreased in order that the remaining portion of the parcel can be preserved for open space. The open space created by cluster developments can be used in several ways, such as for preservation of wildlife habitat or agricultural land.

Thus, the intent of cluster development is to develop less total land area while allowing the same number of total housing units as would have been allowed for a conventional subdivision. By allowing the same number of total housing units, the landowners or developers are not penalized for cluster development.

Community plans should identify which areas of the community are appropriate for cluster development. Deciding which areas are high priority for protection is important. Goals for the preservation of such spaces should be prepared. If the preservation of these lands can coincide with public use, the community's plan could stipulate that open areas remaining after the cluster be dedicated to the public for park use. The local government would be responsible for maintenance of the open space.

If the land should not be used by the general public or should be used for agricultural purposes, an alternative would be to give the land to a private land trust. Another alternative that the open space that it be held in common by the individual homeowners who are part of the cluster development. This would require the establishment of a homeowners' association to manage the common space. The homeowners' association is responsible for all management responsibilities and capital improvements.

Ultimately, good site planning is an important component in reviewing cluster development proposals. It is important that the community properly evaluate cluster development proposals to insure the layout of open space and the proposed placement of structures is appropriate for the topographic, environmental, vegetative, and cultural features of the site.

Guide to Community Planning in Wisconsin

4. Historic Preservation

Many Wisconsin communities have a rich assortment of properties with architectural, historical, archeological, and/or cultural significance. These properties may include Indian burial mounds, residences, public or commercial buildings, barns, or bridges.

A community may only have one property of prehistoric or historic significance or it may have several historic properties which together may constitute an historic district. The presence of historic or prehistoric properties in a community provides community identity and helps foster a special sense of place and an association with the past. A growing number of communities have sought to protect and enhance historic structures in a variety of ways.

4.1 Historic Designations

Often historic properties may carry with them some type of historic designation such as a listing on the national, state, or local register of historic places. Many other properties may be eligible for inclusion on a register of historic places. Historic preservation efforts should include all properties of historic value, regardless of whether they carry some type of designation.

4.1.1 State Register of Historic Places

The State Register of Historic Places was established in 1989.⁶ To be listed on the state register, a property should be at least fifty years old, should not have been significantly altered and must meet at least one of five criteria: (1) has association with events that have made a significant contribution to the broad patterns of history; (2) has association with the lives of persons significant in the past; (3) has architectural significance, including distinctive characteristics or methods of construction; (4) represents a significant and distinguishable entity whose components may lack individual distinction; and (5) yields, or is likely to yield, information important to prehistory or history. Properties are nominated simultaneously to the state and the national register.

4.1.2 National Register of Historic Places

The National Register of Historic Places was established under the National Historic Preservation Act of 1966. The National Register includes properties of national, state, and local significance and must satisfy criteria similar to those for the State Register.

4.1.3 Local Register of Historic Places

Through the adoption of a local preservation ordinance and the appropriate planning, a community can develop its own register for properties of local historic significance. At a minimum, the criteria should be consistent with the criteria for inclusion on the state and national registers.

4.2 Historic Preservation Planning

Preservation planning is an important component for local historic preservation efforts. Preservation planning often consists of a separate preservation plan, such as a plan for the preservation of a community's main street. If a community is in the process of preparing a master plan for the future development and redevelopment of the community, the community should strongly consider including the historic preservation plan as an element of the master plan. Whether the preservation plan is a separate plan or part of a master plan, preservation values should be incorporated into other planning efforts, such as planning for housing, transportation, and public improvements.

Historic preservation plans articulate the goals of historic preservation for the local community and provide an organizing framework for efforts to preserve historic properties. Preservation plans often include a survey of historic resources in the community. The plans also help to eliminate uncertainty about the meaning of historic preservation ordinances and form the legal basis for the adoption of a preservation ordinance.

4.3 Historic Preservation Ordinances

Historic preservation ordinances began to

Guide to Community Planning in Wisconsin

appear in Wisconsin communities in the 1960's. For many years, Wisconsin communities have had specific statutory enabling authority to enact such ordinances.⁷

4.3.1 Special Requirements for Cities and Villages

The enabling legislation for cities and villages was amended in 1994 to provide that by the end of 1995, all cities and villages which contain any property listed on either the national register of historic places or the state register of historic places must "enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics."⁸

Besides requiring the enactment of the ordinance, the legislation places the specific duty on cities and villages with properties on either the federal or state registers to "regulate all historic or archeological landmarks and all property within each historic district to preserve the historic or archeological landmarks and property within the district and the character of the district."⁹

4.3.2 Provisions for all Communities

4.3.2.1 Certification of Preservation Ordinances

Cities, villages, towns, and counties can have their historic preservation ordinances certified by the State Historical Society. Certification of an ordinance provides the community with certain benefits such as the use of the Wisconsin Historic Building Code for locally designated historic buildings. The Historic Building Code, administered by the Department of Commerce, permits a flexible and cost-effective approach to rehabilitating historic buildings. Without this code, the application of the standard state building codes may make the rehabilitation of historic buildings prohibitively expensive or more difficult.

To qualify for certification of an ordinance, *Wisconsin Statutes* provides that the local ordinance must contain the following: (1)

criteria for designation of a local register of historic places which are substantially similar to the criteria for inclusion in the National Register; (2) a procedure for the designation of historic structures or districts which includes a nomination process, public notice of nominations, and an opportunity for oral and written comment on the nominations; (3) provides for local control to achieve the purpose of preserving and rehabilitating historic structures and districts; and (4) creation of historic preservation commission.¹⁰

While the legislation requiring that cities and villages have historic preservation ordinances does not specify the contents of the ordinance, it is advisable that cities and villages consider following these content requirements so the ordinance can be certified and the community can take advantage of the benefits of certification.

4.3.2.2 Certified Local Government

Once a city, village, town, or county has established a local preservation program, it can apply to the State's Historic Preservation Officer and the U. S. Department of the Interior to become a Certified Local Government (CLG). A CLG may apply for matching grants for eligible projects such as identifying and evaluating significant historic properties or preparing nominations to the state and national registers of historic places. CLGs may also permit use of the Historic Building Code for locally designated historic buildings.

4.3.2.3 Local Actions Affecting Historic Properties¹¹

Cities, villages, towns, and counties are required by the *Wisconsin Statutes* to determine how their actions may affect properties listed on the federal, state, or local register of historic places when planning for facilities development or when taking any action to preserve, rehabilitate, demolish, maintain, lease, or convey any historic property they own.¹² The state historic preservation officer must be notified of any proposed action which would affect any historic property. School boards have similar duties.¹³ Negotiations may be required between the state historic preservation officer and the city, village,

Guide to Community Planning in Wisconsin

town, county, or school board to mitigate the adverse affects of the proposed project on the historic property.¹⁴

4.3.2.4 Demolition

If a city, village, town, or county orders the demolition or receives an application for the demolition of a historic building, or if the municipality intends to raze a municipally owned historic building, the municipality must notify the state historical society. No demolition may occur for 30 days after this notice is given. During this 30 day period, the state historical society must have access to the historic building to create or preserve a historic record.¹⁵

4.3.2.5 Sale or Lease of Historic Properties

If cities, villages, towns, and counties lease a historic property to another person, the lease must include provisions to protect the historic character and qualities of that property.¹⁶ If a city, village, town, or county sells a historic property, the community must obtain a conservation easement to protect the historic qualities of the property. Finally, certain archeological sites and historic properties open to the public are exempt from general property taxes.¹⁷

4.3.3 Burial Sites

The Division of Historic Preservation of the State Historical Society is responsible for cataloging human burial sites in the state.¹⁸ Once a site has been cataloged, no person may disturb the site without a permit from the State Historical Society. If an activity inadvertently exposes a burial site that has not been cataloged, the State Historical Society must be notified.

4.4 Financial Incentives for Preservation

There are substantial tax incentives to rehabilitate historic buildings. For owners of properties listed in either the state or national register of historic places, Wisconsin provides two rehabilitation income tax credits. One is a five percent investment tax credit for a depreciable, or income-producing historic building rehabilitated

under the federal investment tax credit program. The other is a 25 percent investment tax credit for the approved rehabilitation of a historic owner-occupied personal residence. In addition, for depreciable, or income-producing, properties listed on the national register, the federal government offers a 20 percent investment tax credit. Matching development subgrants are also sometimes available to owners of historic and prehistoric properties for rehabilitation, restoration, and stabilization. Persons interested in the tax credits or the availability of grants should contact the Division of Historic Preservation at the State Historical Society before beginning rehabilitation plans. The Division can be contacted at:

Division of Historic Preservation
State Historical Society of Wisconsin
816 State Street
Madison, Wisconsin 53706-1488

(608)264-6500

Guide to Community Planning in Wisconsin

5. Resource Materials

DESIGN REVIEW

Saving Face: How Corporate Franchise Design Can Respect Community Identity, by Ronald Lee Fleming (American Planning Association Planning Advisory Service Report Number 452, 1994).

Design Review, by Mark L. Hinshaw (American Planning Association Planning Advisory Service Report Number 454, 1995).

Sign Regulation for Small and Midsize Communities, by Eric Damian Kelly and Gary J. Raso (American Planning Association Planning Advisory Service Report Number 454, 1989).

Design Review: Challenging Urban Aesthetic Control, by Case B. Scheer and W. Preiser. (Chapman Hall, 1994).

TRADITIONAL NEIGHBORHOODS

The New Urbanism: Towards and Architecture of Community, by Peter Katz (McGraw-Hill, 1994).

The Geography of Nowhere, by James Howard Kunstler (Simon and Schuster, 1993).

“Neighborhoods Reborn,” **Consumer Reports** (May 1996).

CLUSTER DEVELOPMENT

Rural Cluster Development Guide, Southeastern Wisconsin Regional Planning Commission (Planning Guide No. 7, 1996).

Dealing With Change in the Connecticut River Valley: A Design Manual for Conservation and Development, by Robert Yaro, et al. (Lincoln Institute of Land Policy, 1993).

Rural by Design: Maintaining Small Town Character, by Randall Arendt. (American Planning Association, 1994).

Designing Open Space Subdivisions by Randall Arendt (Natural Lands Trust, 1994).

HISTORIC PRESERVATION

Preparing a Historic Preservation Ordinance, by Richard J. Roddewig (American Planning Association Planning Advisory Service Report Number 374, 1983) (reprints available from the Historic Preservation Division of the State Historical Society).

Innovative Tools for Historic Preservation, by Marya Morris, (American Planning Association Planning Advisory Service Report Number 438, 1992).

Preparing a Historic Preservation Plan, by Bradford J. White & Richard J. Roddewig, (American Planning Association Planning Advisory Service Report Number 450, 1994).

Guide to Community Planning in Wisconsin

6. Endnotes

1. *“Attitudes, Functions, and Interactions in Design Review: Regulation Cultures in Wisconsin,”* unpublished Ph.D. dissertation by Korkut Sabri Onaran, University of Wisconsin-Madison, 1996.
2. *Berman v. Parker*, 348 U.S. 26, 33 (1954).
3. *State ex. rel. Saveland Park Holding Corp. v. Wieland*, 269 Wis. 262, 69 N.W.2d 217 (1955).
4. **Design Review**, by Mark Hinshaw (American Planning Association Planning Advisory Service Report Number 454, 1995) p. 4.
5. *Crafting Urban Design Guidelines*, by Reiko Habe, **Zoning News** (Sept. 1988).
6. Wis. Stat. § 44.36.
7. The authority for counties to enact historic and burial site preservation ordinances is found in sections 59.69(4)(l) and (m) of the Wisconsin Statutes. The authority for towns is found in sections 60.61(2)(h) and 60.64, and the authority for cities and villages is found in sections 62.23(7)(c) and (em) of the Wisconsin Statutes.
8. Wis. Stat. § 62.23(7)(em).
9. The Division of Historic Preservation at the State Historical Society has a model historic preservation ordinance which communities can use in the development of their own ordinance as well as other informational and technical brochures on historic preservation.
10. Wis. Stat. § 44.44.
11. Numerous protections also apply to actions of state agencies which may impact historic properties. These protections are contained in sections 44.39 to 44.41 of the Wisconsin Statutes. Various requirements also apply to the actions of federal agencies under Section 106 of the National Historic Preservation Act of 1966.
12. Wis. Stat. § 66.037.
13. Wis. Stat. § 120.12(21).
14. Wis. Stat. § 44.42.
15. Wis. Stat. § 66.05(9).
16. Wis. Stat. § 66.037(3)(b).
17. Wis. Stat. §§ 70.11(13m) and (34).
18. Wis. Stat. § 157.70.

Chapter 6

ZONING

Chapter 6

1. The Zoning Framework

Power and responsibilities

Developing a zoning ordinance

2. Amending the Zoning Ordinance

Spot Zoning

Conditional and Contract Zoning

3. Variations to Traditional Zoning

PUDs; Floating zones

4. Administering Zoning

Conditional Uses; Variances;

Nonconforming uses; Enforcing the code

5. Resource Materials

6. Endnotes

1. The Zoning Framework

Zoning is one tool used to implement community goals and objectives as set forth in the community's plan. While the regulation of land uses in the United States began during colonial times, the first comprehensive zoning ordinance in the United States was enacted in New York City in 1916. Milwaukee quickly followed, adopting the first comprehensive zoning ordinance in Wisconsin in 1920. That ordinance was upheld by the Wisconsin Supreme Court as a valid exercise of the police power in 1923.¹ Other Wisconsin cities and villages also adopted zoning ordinances in the early 1920's.

Zoning was originally applied in urban areas to protect single family residential uses from incompatible uses such as factories and commercial establishments. Wisconsin was the first state to authorize the use of zoning in rural areas of the state. In 1923, the state legislature authorized the use of zoning by counties for the regulation of the location of commercial and industrial enterprises in unincorporated areas, subject to town approval. In 1929, the legislature expanded rural zoning authority to allow for the management of all rural land uses.

The program was largely a reaction to the mis-management of lands in rural areas, especially in Northern Wisconsin. Lumber companies had cut down almost all of the large forests in the northern counties. The state then encouraged new residents to settle the cut over areas and use the land for agriculture. Unfortunately, the poor soil quality on the once-forested lands and the harsh climate made profitable agriculture nearly impossible. By the 1920's, many of the new farms were tax delinquent. In an attempt to discourage further settlement in areas now deemed more appropriate for forestry and recreation, the state promoted rural zoning.²

In the rush to adopt zoning ordinances in the 1920's and 1930's, zoning and planning were considered the same. As the pace of land development increased following World War II, the many inadequacies of zoning became apparent. Given the complex nature of the community development process, zoning alone was ineffective at managing growth. Unconsciously, communities were making planning policy each time a zoning change was granted or denied. Resulting was a piecemeal and somewhat arbitrary approach to dealing with

Guide to Community Planning In Wisconsin

issues of growth and change. No conscious public planning policy was available to guide zoning decisions.

In addition, by its very nature, zoning was used to separate residential, commercial, industrial and institutional land uses. This separation of uses promoted dependence on the automobile and other problems.³

Finally, zoning requirements for minimum lot size, set backs, and other restrictions created communities that are segregated, based on an individual's income. Recent studies of zoning and other land use controls in Waukesha County have reaffirmed what numerous studies have shown nationally--zoning and other land use controls can increase the cost of housing, thereby affecting its affordability.⁴

Nonetheless, zoning remains the most widely accepted land use control. It will continue to be an important plan implementation tool. Planning, however, is necessary to help mitigate the potentially negative effects of zoning. Zoning needs to be predicated on goals formulated in a plan that is separate and distinct from the zoning ordinance. Zoning must also be used in conjunction with other appropriate tools, to help achieve the vision of a community. It is through a plan that the vision is articulated and the various implementation tools can be coordinated.

1.1 Zoning Powers and Responsibilities: Wisconsin Counties, Towns, Cities and Villages

In Wisconsin, zoning power is granted to counties, towns, cities, and villages. Each of these units has geographic boundaries. In some cases, zoning power is exercised over part of the lands within a community's boundaries. In other cases, all the lands within the jurisdiction are zoned. In still other cases, zoning power is exercised over areas outside the local jurisdiction's boundaries. This latter activity is called "extraterritorial zoning."

There are some distinctions between who is authorized to do general zoning and who is authorized to do special purpose zoning. General zoning addresses a variety of public purposes and

objectives. Special purpose zoning addresses specialized concerns or special geographic areas such as lands around airports and lands along rivers or lakes. In Wisconsin, the principal forms of special purpose zoning are agricultural preservation zoning, shoreland zoning, and floodplain zoning.

There is also a distinction between zoning that is mandatory (that is, regulations are required to be adopted locally by a requirement of state law) and zoning that is a matter of local option. Local option zoning is voluntarily adopted by local communities. General zoning is almost always at local option, while some special purpose zoning (shoreland zoning, for example) is mandatory.

Both zoning and rezoning is considered a legislative process.⁵ This means that the courts will often defer to the policy decisions made by local communities concerning zonings and rezonings. Judicial interference is restricted to cases of abuse of discretion, excess of power, or error of law. Local communities therefore have a considerable degree of latitude in drafting zoning ordinances.

The following sections review the various zoning authorities of the different units of local government in Wisconsin. It is important to remember that this section only addresses general zoning powers and responsibilities. Other land use enabling laws, such as the statutes authorizing local subdivision regulation and the issuance of building permits, set forth a different arrangement of powers and responsibilities.⁶

1.1.1 Counties

The general zoning authority of counties is limited. General county zoning does not apply to lands inside the limits of incorporated cities and villages. Also county general zoning can apply to the unincorporated (town) lands in the county only if a town board approves the application of a general county zoning ordinance to land within the town.

General county zoning seeks to promote the public health, safety, and general welfare. The legislature has listed a variety of topics that can be dealt with in a general county zoning ordinance. According to the statutes, counties have the power through zoning to "determine, establish, regulate, and restrict:

Guide to Community Planning In Wisconsin

- (a) The areas within which agriculture, forestry, industry, mining, trades, business and recreation may be conducted.*
- (b) The areas in which residential uses may be regulated or prohibited.*
- (c) The areas in and along, or in or along, natural water-courses, channels, streams and creeks in which trades or industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.*
- (d) Trailer camps, or tourist camps and motels or both, and mobile home parks.*
- (e) Designate certain areas, uses or purposes which may be subjected to special regulation.*
- (f) The location of buildings and structures that are designed for specific uses and designation of uses for which buildings and structures may not be used or altered.*
- (g) The location, height, bulk, number of stories and size of buildings and other structures.*
- (h) The location of roads and schools.*
- (i) Building setback lines.*
- (j) The density and distribution of population.*
- (k) The percentage of lot which may be occupied, size of yards, courts and other open spaces.*
- (l) Places, structures or objects with a special character, historic interest, aesthetic interest or other significant value, historic landmarks and historic districts.*
- (m) Burial sites.”⁷*

In contrast to county general zoning authority, there are different procedures and requirements related to some special types of zoning. For example, state law requires that counties adopt shoreland zoning that is applied to shorelands in towns. Counties must regulate all lands in unincorporated areas within 1000 feet of a lake, pond, or flowage, 300 feet from a river or stream, or to the landward side of a floodplain.⁸ The restrictions placed on shorelands are designed to protect navigable waters for fishing, recreation, navigation, and scenic beauty. A county ordinance adopted in accordance with this statutory mandate need not receive town board approval.

Counties must also adopt floodplain

zoning for floodplains where appreciable damage from floods is likely to occur. The geographic scope of county floodplain zoning will be the same as shoreland zoning along a water body that floods.⁹ Flood-plain zoning has the specific purpose of reducing damage from flooding. County floodplain zoning applies in unincorporated areas and does not require approval of town boards.

Finally, counties may adopt special purpose zoning of agricultural lands or of lands within the approach way of a county-owned airport. Airport protection zoning by a county would not require town board approval to go into effect. Exclusive agricultural zoning, however, does require town board ratification.¹⁰

1.1.2 Towns

Land located in towns may be zoned in a variety of different ways. The procedures and requirements for the different ways of zoning town land are often a source of confusion for citizens and local officials.

First, towns may become zoned by acceptance of county general zoning for the town. A county board may pass a general zoning ordinance including a text and map of zoning districts. This ordinance and map may become effective in a particular town if the town board votes to approve the ordinance and map for the town. Through this process, lands in the town come under county zoning. The town board has an opportunity to approve or disapprove all subsequent amendments proposed to a county zoning ordinance or map which affects the town.

Second, town land may be zoned under town general zoning ordinances. Town zoning applies only to unincorporated lands in the civil town and has no extraterritorial effect on lands in cities or villages or in other towns. A town can adopt its own ordinance in two ways:

1.1.2.1. *Town Zoning Where There is No County Zoning.*¹¹

In order to adopt a town zoning ordinance under this procedure, the county must not have adopted a general zoning ordinance. A town board wishing to zone can petition the county board to adopt a county ordinance. If, within approximately

Guide to Community Planning In Wisconsin

one year, the county board has not passed such an ordinance, the town board is free to adopt its own ordinance. This procedure is the least used of the various ways that town land can be zoned.

1.1.2.2. Town Zoning Under "Village Powers."¹²

A more frequently used procedure for adopting town zoning involves these steps:

First, the town electors pass a resolution at an annual town meeting directing the town board to exercise village powers. Second, the town board considers and passes a town general zoning ordinance under the procedures available to cities and villages.

If the town is located in a county that has general county zoning, two more steps are necessary. First, the electors of the town must approve the decision to have town zoning at a referendum vote at an annual town meeting.¹³ The second step is that the county board must approve the town zoning ordinance.¹⁴

The county board must also approve all amendments to a town ordinance adopted under the village powers procedure whenever the county has a county zoning ordinance. County shoreland and floodplain zoning ordinances apply in towns with their own general zoning ordinances.

Finally, town powers to enact ordinances protecting approaches to town owned airports parallel county powers. County approval of the airport approach protection ordinance is not required.¹⁵

1.1.3 Cities and Village

Cities and villages may adopt general zoning within their boundaries.¹⁶ The statutory purpose of zoning for cities and villages is to promote the health, safety, morals or, general welfare of the public.

Cities and villages are authorized to adopt ordinances which regulate and restrict:

the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for

*trade industry, mining, residence or other purposes if there is no discrimination against temporary structures.*¹⁷

Cities and villages may adopt zoning within the city or village limits without obtaining the consent of other units.

Cities and villages may also adopt extraterritorial zoning in town areas beyond city and village boundaries.¹⁸ Extraterritorial zoning is general zoning that affects land around the borders of a city or village.

City and village zoning law concerning floodplains and airport approaches is similar to county law. Cities must adopt floodplain zoning where appreciable damage from floods is likely to occur¹⁹ and they may adopt zoning of airport approaches.²⁰

Cities and villages also face some unique zoning provisions when land is annexed to a city or village. For example, An ordinance for the annexation of territory described in an annexation petition may temporarily designate the zoning classification of the annexed territory.²¹ Otherwise, in the case of annexed land which has been subject to a county zoning ordinance, the county zoning ordinance will continue in effect until the city or village changes it.²² If an annexation is contested in the courts, the county ordinance will prevail until an ultimate determination by the courts in the matter.²³

County shoreland zoning ordinances continue in effect after land is annexed to a city or village until the city or village adopts its own ordinance that is at least as restrictive as the county ordinance or the county ordinance is modified in accordance with state requirements.²⁴ County construction site erosion control and storm water management zoning ordinances also remain in effect until the city or village adopts ordinances which are at least as restrictive as the county ordinance.²⁵

1.2 Developing a Zoning Ordinance

Developing a zoning ordinance should follow the completion of a successful planning process. The ordinance may also be developed at the same time the plan is being developed. Indeed, some plans may include a draft of the ordinance as one of the elements of the plan. Some zoning ordinances are also

Guide to Community Planning In Wisconsin

developed without a separate planning document.

The benefit of a plan is that it provides guidance for the zoning ordinance. Without the plan, it will be more difficult to develop the zoning ordinance and, once completed, the ordinance may be more vulnerable to attack. If the community has not prepared a plan, it still needs to follow the basic steps in the planning process in order to determine what should be in the zoning ordinance. In other words, the community should identify the issues facing the community, collect and analyze relevant data, define the objectives of the community, explore some alternative zoning approaches, and then develop the ordinance. As with any planning process, implementation of the ordinance and monitoring its effectiveness are critical components. Citizen involvement is also crucial.

The following sections briefly outline steps that a community can take in the preparation of a zoning ordinance.

1.2.1 Initiation of Work

The plan commission often undertakes the job of preparing the draft zoning ordinance with help from specialized professionals. In some instances, a special project advisory committee or task force is created to develop the ordinance. The special committee may comprise some of the staff from the community, interested citizens, and/or other interest groups.

Involving citizens and other interested organizations in the actual preparation of the ordinance is a good money saving technique for communities. The work of citizens can be aided by a small team of professionals and semi-professionals to do the ordinance drafting and mapping. Citizens should also be engaged to educate and help "sell" the ordinance package. Special problems or topics may be turned over to special task groups. Whatever the organizational format, it is important that someone be in charge, set a timetable, and keep the pieces coordinated.

1.2.2 Preparing the Ordinance Draft

A planning process that has defined community objectives will provide guidance for

the preparation of a draft zoning ordinance. A zoning ordinance task force or special committee will also have more detailed recommendations than the plan can provide.

This phase of ordinance preparation requires at a minimum, a planning or land use specialist, an attorney, and an administrative assistant. Research help will be useful to check on technical standards and to ferret out experience in other localities. Involving citizens and other interest groups will provide direction on what standards are acceptable in the community. Graphics talents are also useful to allow visual concepts to be displayed. The correct mixture of these skills and the question of which are voluntarily contributed and which are purchased depend on local circumstances.

In addition, every use that is regulated, every permit that is required, every special exception that is listed creates an administrative burden somewhere down the road. Ordinance preparers need constantly to remember the workload and budgetary limits of the zoning units and staff.

1.2.3 The Zoning Ordinance Text

The format of zoning ordinances varies from community to community. All zoning ordinances have two components--the zoning ordinance text and the map of the zoning districts. A zoning ordinance text will usually have these features: a title identifying the ordinance, a statement of the legal authority to adopt the ordinance, an overall statement of intent or purpose which should refer back to the need to implement that community's plans, an identification of the geographic area to which the ordinance applies, and several general provisions, such as:

- A severability clause.
- An effective date.
- A statement as to impact of the ordinance on construction projects commenced prior to or on the effective date.
- A statement as to the relationship between the ordinance and restrictive covenants.
- Identification of the zoning district map and a statement adopting the map as part of the ordinance.

Guide to Community Planning In Wisconsin

The ordinance will also identify the different zoning districts and the uses that are allowed in each district. For each district, the ordinance should list the following:

- Statement of purpose of the district.
- List of permitted uses and conditional or special exception uses.
- Standards, criteria, and guidelines for uses.
- Dimensional standards for buildings and parcels in the district.

The zoning ordinance text should also include the provisions that are to be applicable in all the districts. These include rules and/or guides on ordinance interpretation and definitions of terms and rules on pre-existing conditions, including nonconforming uses.

1.2.4 The Zoning Ordinance Map

The zoning map should be easy to understand and to use. District boundaries on the map should be as precise, careful and as easy to interpret as possible. Wherever possible, district lines should follow recognizable features. Maps should be reproducible at reasonable expense. Finally, maps should be referenced in the text and should be capable of being changed when map amendments are passed.

1.2.5 Administrative Matters

The zoning ordinance should also address a number of administrative matters.

A plan commission must be in place or must be created by local ordinance. The plan commission is responsible for preparing the plan, developing the ordinance, evaluating the performance of the ordinance, developing proposed changes to the ordinance, and processing amendment proposals. The local ordinance should, at a minimum, list the responsibilities of the plan commission. The listing can be brief. For example, it can state that the plan commission shall formulate a proposed zoning ordinance and receive referrals, hold hearings, and make

recommendations on proposed amendments to the zoning ordinance.

The board of adjustment or appeals²⁶ must also be created by the ordinance. At a minimum, the ordinance should assign the board the responsibility of handling administrative appeals and variances. The ordinance must deal with the composition of the board.²⁷ It should outline the procedures for board activities and should note the availability of appeals from board decisions²⁸.

The ordinance needs to define land use activities that require permits, procedures for processing applications for permits, procedures, and for challenging decisions made during the processing. The statutes do not cover these items in any detail. They must, therefore, be covered in the local ordinance.

The local ordinance must set forth the procedures for handling *special exceptions* or *conditional uses*. State law is not adequate to articulate procedures for special exceptions.²⁹ The ordinance should define application procedures, timetable and routines for the initial study of the application, hearings, documentation and reporting of decisions and conditions, and appeal procedures.

1.2.6 Amendments

The ordinance should set forth procedures for processing amendment proposals. State law spells out procedures on amendments in some detail. However, at minimum, a locality will wish to deal with fees for applications. Since amendment procedures are complex, it is advisable to put a paraphrased summary of them in the local ordinance.

1.2.7 Enforcement Provisions

The ordinance should carefully define all activities that are mandatory under its terms, as contrasted with advisory provisions, and should identify penalties and other legal consequences for individuals who violate the provisions of the ordinance. Procedures for initiation of legal actions to deal with alleged or potential violations should be spelled out.

Guide to Community Planning In Wisconsin

1.2.8 Community Dialogue on a Draft or Redraft

The *Wisconsin Statutes* prescribe procedures to be followed when the plan commission has tentatively settled on a draft of a new ordinance. The formal statutory proceedings should not be initiated until the commission is relatively sure that the draft is going to have a reasonable reception. Thus, the commission will usually want to take a preliminary draft out into the community for review and comment. This informal review process may cause the commission to revise the preliminary draft.

It is important to keep in mind that the general public and the public's elected representatives seldom will accept a zoning proposal that they do not understand, at least in broad dimensions. Time must be allowed for the story to be told, for the public to absorb the story and respond, and for more interaction, as necessary.

To push the project on a fixed timetable will be viewed as a "railroad job" and will be resisted regardless of merit. On the other hand, there are equal dangers in going too slow. A new ordinance or revision project that grinds on for many months or even years becomes stale. The effort loses momentum and becomes a target for nitpicking and delays.

Finally, it should be kept in mind that the general public wants to know what the zoning says for their lands and their neighborhood. People become frustrated if that question is not answered. Presentation of a zoning text without a map keeps the question from being answered. Presentation of a text and map may still leave questions unanswered if a property is in district where virtually all land use possibilities are made special exceptions/conditional uses. An attempt to win public support for a zoning ordinance cannot be put forth in ways that fail to answer the question "what does it mean for my land?" This would likely be met by public hostility.

1.3 Formal Processing of the Ordinance

1.3.1 Identification of the Proposed Zoning Ordinance

The first step in formal processing of the zoning ordinance is for the plan commission to identify the draft of the zoning ordinance and map that will be the subject of a formal public hearing.

The county zoning statutes refer to the proposed regulations and map at this stage as the "draft of a proposed zoning ordinance."³⁰ The zoning statutes for cities, villages (and towns with village powers) refers to the proposed regulations and map (or "district plan") as "tentative recommendations."³¹ The town zoning statutes refer to the proposed ordinance as a "preliminary report."³² The name is less important than the necessity that this draft be distinguished by label, date, and color of the paper or cover, from earlier working drafts that may be circulating or, in the case of a comprehensive revision, from the current ordinance.

The plan commission should have copies of the draft available in sufficient quantity to satisfy the reasonable needs of persons who want the complete document. Recommended maps also should be reasonably accessible.

1.3.2 Public Hearing

The plan commission³³ must hold a public hearing on the proposed zoning ordinance. This is not a general informational meeting. The question pending before the commission and the subject of the testimony at the hearing is: should the commission recommend to the governing body that the draft be adopted; should the draft, with amendments proposed in the testimony, be adopted; or should the draft be rejected?

The question of required notice of the hearing varies among types of jurisdictions. For counties, cities, villages (and towns exercising village powers) the statutes require publication of a class two notice prior to the hearing.³⁴ Towns operating under town law are directed to hold a public hearing before the town plan commission acts on the draft.³⁵ Cities, villages and towns operating under village powers must also provide written notice at least 10 days prior to the meeting to the clerk of all abutting municipalities.³⁶

Guide to Community Planning In Wisconsin

1.3.3 Plan Commission Action Following the Hearing

The plan commission will meet after the hearing and decide upon a recommendation to the governing body. This meeting can come immediately following the close of the hearing or it can come later. The options available to the commission are these:

- Recommend that no new or revised ordinance be adopted.
- Decide that the ordinance project needs more work, whereupon the commission would repeat all or part of the preparation stage and would plan to return at a later date to the formal initiation stage.
- Recommend to the local governing body that a new ordinance of the draft with specific and identified changes, presumably matters brought out at the hearings, be adopted.
- Recommend to the local governing body that the ordinance be adopted in the form presented at the public hearing.³⁷

Under town zoning, if the plan commission makes substantial changes to the proposed ordinance, the plan commission must hold another hearing on the revised document.³⁸

1.3.4 Receipt of Draft and Action by Government Body

The proposed ordinance recommended by the plan commission for adoption next goes to the local governing body for adoption. No special procedures are given in the zoning enabling statutes for this referral. General local procedures would be appropriate. The procedures will typically involve giving the report to the clerk, who will place it on the agenda of the local governing body. There is no statutory time period (minimum or maximum) within which the governing body must consider the report. For towns under town zoning, the town board must hold a public hearing.³⁹ For cities, villages, and towns exercising village powers, a public hearing before the governing body is not required.⁴⁰

When the governing body receives the recommended zoning ordinance, the governing body may adopt the ordinance as submitted, reject

it, or return it to the plan commission, recommending certain changes. The governing body apparently cannot adopt changes to the ordinance from the form submitted by the plan commission without first referring it back to the commission for consideration, hearing, and a new recommendation.⁴¹

In a town exercising town zoning, the town board may vote to adopt or reject the ordinance as presented.⁴²

1.3.5 Publication and Notice of Adopted Ordinance and Required Consents by Other Governing Bodies

Following passage, the new zoning ordinance must be published and otherwise distributed as required by law. In the case of counties and of towns acting under village powers, the ordinance also needs ratification by another government unit. The specific requirements are summarized below.

Beyond the minimal formal distributions outlined below, it may be wise for the adopting unit to send copies, summaries, or notices of zoning and related ordinance adoption to other government units and agencies, professionals engaged in work relating to land use, and public libraries.

1.3.5.1 County Zoning Ordinances

When adopted by the county board, the county clerk shall send two duplicate copies of the ordinance by registered mail to the clerk of each town for consideration of the town board.⁴³

In addition, the passage of the ordinance is covered by other sections of the *Wisconsin Statutes*, which require the county clerk to publish any adopted ordinance in the official newspaper as a class I notice or, alternatively, to publish ordinances in book or pamphlet form, and to send copies to the town clerks.⁴⁴

The mailing of a duplicate copy of the ordinance to town clerks starts the wheels in motion leading to a town decision on ratification. It is a good idea to send to the town officials an outline of the town's rights and responsibilities regarding the new county ordinance, in addition to the minimal formal materials sent by the county clerk.

A general county zoning ordinance is not effective in any town until it has been approved by the town board.⁴⁵

Guide to Community Planning In Wisconsin

Counties need to go through the following steps in order for general zoning to go into effect in towns:

- The town clerk receives the county ordinance from the county. The clerk should report this receipt to the town board. The town board has no statutory deadline to meet and the statutes do not require a hearing on the ordinance by the town board.
- The town board⁴⁶ may vote to approve⁴⁷ having the county zoning ordinance⁴⁸ go into effect in that town.⁴⁹
- If the town board so decides, it must pass an approving resolution.⁵⁰
- The town clerk then certifies a copy of the approving resolution, attaches it to one of the two copies of the county ordinance which the town clerk had earlier received from the county clerk. This two-part package is then "promptly filed" with the county clerk. The county clerk records the date the package is received. This becomes the effective date of the application of the county zoning in that town.
- The county clerk next mails a report to the town board telling the board of the date.

1.3.5.2 Town Zoning Ordinances

Town zoning ordinances adopted under town law must be published like other town ordinances⁵¹ and recorded in the minutes of the town board proceedings.

1.3.5.3 City and Village Ordinances; Town Ordinances Adopted Under Village Powers

Publication is required for village ordinances⁵² and city ordinances.⁵³ No approvals by other units of government are required.

Towns using village powers to adopt zoning would follow the village laws noted above. In addition, where the county has a general zoning ordinance, the town must submit the adopted town ordinance to the county board for approval.⁵⁴ There is no detailed law or firmly established procedure for accomplishing county board approval (where the county has a general zoning ordinance) of town zoning ordinances passed

under village powers. Therefore these procedures need to be developed by local officials. The procedure for town approval of county ordinance procedures can be followed, at least in essence, but in reverse.

1.4 Extraterritorial Zoning

Cities and villages are authorized to participate with towns in the zoning of lands outside their incorporated boundaries.⁵⁵ The extraterritorial zoning jurisdiction of 1st to 3rd class cities extends 3 miles beyond corporate limits. The limit for 4th class cities and villages is 1½ miles beyond corporate limits. In order to exercise their extraterritorial zoning powers, a city or village must have created a plan commission and adopted a zoning ordinance for the land within its corporate limits.

Three major steps are involved in the adoption of an extraterritorial zoning ordinance. First, the governing body of the city or village adopts and publicizes a resolution which establishes its intent to exercise its zoning authority within all or part of its extraterritorial jurisdiction. The resolution must include a description of the area to be zoned.

In the case of overlapping jurisdictions, lands within the overlapping area are divided on a line equidistant from the corporate limits of each city or village affected. Once established, this boundary is not affected by subsequent changes in the boundaries of the municipalities involved.

Second, the governing body directs its plan commission to formulate tentative recommendations for the extraterritorial district plan and regulations. The statute requires referral of the extraterritorial zoning resolution to the adopting municipality's plan commission. Actual hearings, recommendations, and decisions regarding the final zoning plan are made and conducted by a joint extraterritorial zoning committee. The joint extraterritorial zoning committee is composed of three city or village representatives and three members from each of the towns included within the area proposed to be zoned. Representatives from the city or village may be the three citizen members of the local plan commission or any 3 plan commissioners designated by the mayor or village president. The three representatives from each town involved are appointed by the respective

Guide to Community Planning In Wisconsin

town boards. They are supposed to be persons of “recognized experience and qualifications” and must be residents of the appointing town.

The entire plan commission of the city or village must work with members of the joint committee in the preparation of the extraterritorial zoning plan. Once a tentative or recommended plan has been formulated, the joint committee must hold a public hearing on its proposal. The hearing must be announced by a Class 2 notice published in a newspaper of general circulation in the area to be zoned.

Notice of the public hearing and a description of the proposed zoning plan must also be mailed to the town clerk of each town involved in the extraterritorial zoning process. Residents and representatives of these towns must be given an opportunity to speak at the public hearing.

The joint committee must approve the recommendations by vote of a majority of the six members. The zoning plan and district regulations are then sent to the governing body of the municipality. A separate vote must be taken on the plan and regulations for each town. Town representatives on the joint committee shall vote only on plans and regulations affecting the town

which they represent.

Third, the final plan and regulations need to be adopted. Once it has received the extraterritorial zoning plan as approved by the joint committee, the governing body of the municipality may adopt the regulations as received or request changes. Before adoption the governing body must give notice of its pending action by publication and mailing and must hold a public hearing. Any changes proposed by the legislative body must be reapproved by the joint committee and go through a process of notice and public hearing.

The governing body of the municipality adopting the initial resolution to zone outside its corporate limits may adopt an interim extraterritorial zoning ordinance. The interim ordinance freezes existing zoning or uses in the area during the period in which the extraterritorial ordinance is being prepared.⁵⁶ It is valid for two years after its enactment and may be extended for another year if the joint committee so recommends.⁵⁷

Guide to Community Planning In Wisconsin

2. Amending the Zoning Ordinance

A zoning ordinance can be amended by vote of the governing body that enacted the ordinance. The zoning enabling statutes spell out procedures for initiation, review, and processing of amendments and for required ratifications. Local ordinances may also have additional requirements.⁵⁸ These specifications must be followed to the letter.⁵⁹

2.1 General Principles Applicable to Zoning Amendments

A zoning ordinance has two major components: a text and a district map. Each can be amended. Some amendments affect a wide range of uses and lands, and a number of applicants and other effected persons. Other amendments affect single parcels and very limited numbers of persons. The first type of amendment is general and the second type is specific.

As with all aspects of land regulation, zoning amendments must be based on the public interest and must be reasonable. Amendments that are specific and appear to affect interests of a small number of persons or a small area of land tend to raise questions about whether they are in the general public interest. "Spot" map amendments commonly present this question. An amendment which is strictly for private benefit is illegal. However, spot amendments are not necessarily lacking in public benefit. An essential yet all too often overlooked step in amending the zoning ordinance is to refer to the community plans which should help establish the public interest behind the rezoning.

Zoning amendments that change land use rules can upset landowner investments and development plans that were made in reliance on the former ordinance. Under some circumstances, an amendment can be declared inapplicable to a project that had commenced before the rules were changed, where conformity to the amendment would be a hardship.

There are also other procedures (a variance, or a special exception) that can achieve

the same results as a zoning amendment. Choosing which procedure to employ is partly a legal question and partly a question of strategy.

For example, an ordinance may specify a 15-foot minimum side yard. It is discovered later that a few lots would be better served by a 10-foot side yard because of occasionally occurring topographical conditions. When these conditions are present, the normal 15 foot rule creates a hardship that can be relieved without disruption of the spirit of the ordinance.

In this situation the enacting unit could amend the ordinance to state that side yards can be 10 feet where slopes in the side yard area exceed a certain rate. Conversely, the ordinance can be left unamended and the reductions handled by variances. Either approach is legal.

2.2 Amendment Procedures: Counties

The process of amending a county zoning ordinance or changing a zoning district boundary (other than a comprehensive revision discussed below) begins with the filing of a petition for amendment with the county clerk.⁶⁰ The petition may be filed by one of four parties: (1) a property owner in the area to be affected by the amendment; (2) the town board of any town where the ordinance is in effect; (3) any member of the county board; or (4) the county plan commission.*

The county clerk must refer the petition immediately to the county plan commission, notify the county supervisor of the affected district, and make a report of the petition to the county board at its next meeting.⁶¹

Upon receipt of the referral, the plan commission's work begins. This includes scheduling and holding a public hearing, communications with the affected town board(s), considering the amendment, making a recommendation, communicating the

*The term "plan commission" refers generically to county zoning committees, county planning and zoning committees or commissions, etc.

Guide to Community Planning In Wisconsin

recommendation to the county board, and drafting the amendment in ordinance form.

Calling the hearing requires the commission to choose a date and place, and to publish a class 2 notice. A copy of the notice is sent by the commission to the clerk of each affected town by registered mail at least 10 days before the hearing date.⁶² The notices also should be sent to the petitioner and to the owners of record of all lands proposed to be rezoned (in the case of a specific map amendment) and all lands which abut the lands proposed to be rezoned. These landowners have “protest petition” rights.⁶³ The statutes do not require that they receive mailed notice, but it is generally considered wise to give notice. The notices mailed to the petitioner and the landowners need not be by registered mail.

The commission then proceeds to conduct the public hearing.⁶⁴ As soon as possible after the public hearing, the plan commission is to convene and vote upon a recommendation to the county board. The recommendation is either to approve the petition as submitted; modify and approve the petition,⁶⁵ or disapprove the petition.⁶⁶

If the commission's recommendation is to approve or to modify and approve the amendment, the commission must “cause an ordinance to be drafted effecting its determination.” This ordinance and the commission’s recommendation are sent to the county board. If the commission recommends denial of the petition, the commission must report its recommendation and the reasons for the recommendation to deny the petition to the county board. In addition to the plan commission’s recommendation, the county board must receive proof of publication of the notice of hearing, and of the mailing of notices to town clerks, and notices of any town board resolutions.⁶⁷

Before the county board votes on the recommendation of the plan commission, it should inquire about possible negative reports from affected town boards or protest petitions as discussed below.

2.2.1 Town Veto Over County Zoning Amendments

Town boards have a statutory right to

disapprove and reject proposed amendments to county zoning ordinances under certain circumstances.⁶⁸ This right extends to general county zoning only. It does not extend to shoreland or floodplain zoning. It also does not extend to the zoning of county owned lands.⁶⁹ The right must be exercised according to statutory procedures.

In the case of map amendments, each town board having territory affected by the map amendment has full, individual veto power.⁷⁰ In the case of text amendments, the amendment can be vetoed by action of a majority of the affected towns.⁷¹ The county plan commission notice of the upcoming hearing on all proposed zoning amendments is sent to the town clerk of each affected town which initiates the town veto procedure. The town board has until 10 days after the date of the county plan commission's hearing to express its veto. The town board may also extend its time for disapproving any proposed amendment by adopting a resolution providing for the extension.⁷² A certified copy of the petition providing for the extension must be filed with the county clerk.

After a town clerk receives notice of the hearing, the clerk presents the matter to the town board. The town board can immediately disapprove of the change. The board would, at this stage, vote to pass a resolution stating its disapproval.⁷³ This resolution should then be certified by the town clerk and sent by the clerk to the county plan commission. The certified town board resolution of disapproval must be received by the county plan commission no later than 10 days (or 30 days if the town board adopted a resolution providing for the extension) after the county's hearing, to accomplish its full legal effect.

The town board may also decide to take no action immediately and attend the hearing before the county plan commission and then meet to take action. However, any negative action must be taken and transmitted to the county plan commission within the allotted time frame.

Finally, the town board may choose not to pass a disapproving resolution. In this case it may simply do nothing. An approving resolution or a

Guide to Community Planning In Wisconsin

resolution taking a neutral stand has no legal force.⁷⁴

Assume that a town board has filed a resolution of disapproval (or a majority of affected towns have done so, in case of a text amendment) and that the filings are timely. When this happens, the county plan commission automatically loses the option of recommending county board passage of the amendment in the exact form proposed in the petition. The county plan commission must choose either to recommend passage of the petition in a revised form or to recommend disapproval.

The county board receives the commission's recommendations and a notice of all town board resolutions. Again, assuming that veto resolutions are received and a negative recommendation has been made by the plan commission, the county board probably will vote to concur in the negative recommendation. This kills the petition.

The county may disagree with the town boards. The county board has the authority to pass the amendment. Should it do so, the county clerk is obliged to send the town clerk of each affected town a copy of the adopted amendment within seven days after the county board's action. The town clerk transmits this to the town board, which then may pass another disapproval resolution. A certified copy of the disapproval resolution must be filed with the county clerk within 40 days following the county board's action. If a majority of the towns affected by a text amendment to the zoning ordinance file disapproval resolutions, the amendment will not become effective. In the case of a zoning map amendment, if the town in which the land is located files a disapproval resolution, the amendment will not become effective.

Having reviewed any town board responses to the proposed amendment, the county board now must ask about a second possible negative report called a "protest petition."

2.2.2 Protest Petitions⁷⁵

A protest petition is a document objecting to a rezoning signed by owners of lands proposed to be rezoned and/or by owners of land abutting

lands proposed to be rezoned. The protest petition is a written statement signed by the owners of the property proposed to be rezoned or by owners of abutting property. To be effective, the lands owned by the signers must make up 50 percent or more of the lands being rezoned or must be over 50 percent of the total perimeter of the area located within 300 feet of the area proposed to be rezoned. The protest petition must be received by the county clerk at least 24 hours prior to the date of the county board meeting at which the board is to consider the report of the plan commission on the proposed amendment.⁷⁶

The county clerk should bring any such petition to the attention of the county board.⁷⁷ A determination must be made as to whether the petition is legally sufficient. Ownership facts, area and perimeter facts must be verified and the date of receipt must be reviewed. The responsibility rests with the board to accomplish this check. The board can have the check done before or during the board meeting by the officers and staff or it may re-refer the matter back to the plan commission for a report on the authenticity of the ownership statements.

After the board receives the report on legal sufficiency of the petition, it can proceed. If the petition is found to be valid, the proposed rezoning must be adopted by the affirmative vote of three-fourths of the county board members present and voting. If the petition is found to be untrue to the extent that the required frontage or area ownership is not present, the protest may be disregarded.

2.2.3

County Board Action

Having reviewed the question of town veto resolutions and protest petitions, the county board is ready to act on the report of the plan commission. The county board reaches the proposed amendment by working through its agenda to the point of the report from its plan commission. Within that report will be a recommendation on the amendment petition. A draft ordinance will be part of the report if the recommendation is positive.

The county board may enact the

Guide to Community Planning In Wisconsin

recommended ordinance drafted by the plan commission; enact the ordinance with amendments; deny the petition for amendment; or refuse to deny the petition as recommended by the plan commission. Under the last alternative, the board must re-refer the petition to the plan commission, with directions to draft an ordinance consistent with the petition, and report the ordinance back to the county board for action.⁷⁸

Re-referral does not bind the county board to pass the ordinance but it causes another ordinance before the board at a later date. These procedures take place within the operating rules and customs of the county board meeting.⁷⁹

The matter of amending a proposed zoning ordinance amendment by the county board raises several questions. One question is whether an amendment so significantly alters the proposed amendment as to warrant a recycling back through the various notice and hearing steps. The county zoning statutes do not mandate such a recycling. However, it is important that the board make good faith efforts to keep the parties informed about the process and the status of the petition.

Another question is the impact of floor amendments on the town veto. Any floor amendment that is passed reactivates the town veto and allows affected towns a 40-day period to pass a veto resolution after the county board vote is taken, regardless of town action or inaction earlier on the original rezoning petition.

2.2.4 After a Decision Has Been Made

Several procedural steps may follow after the county board has acted. If the board's action was to re-refer or postpone a decision, there maybe follow-up steps dictated by what the board votes.⁸⁰

If the board's action is to deny the amendment, there is a practical necessity to notify at least the original petitioner and perhaps other interested persons and to see that the file on the matter is kept together and placed in the office of either the county clerk or the plan commission for future reference. Action of the county board defeating an amendment cannot be vetoed by the town board or the executive. Thus, there is no transmittal to either the town board or the county

executive.

If the board's action is passage of the amendment, several important follow-up steps are required. The simplest case is an amendment in a county without an executive where the affected towns did not submit disapproval resolutions to the plan commission and where the amendment voted by the county board makes only the change requested in the original petition. Here, the county clerk records the passage of the amendment and gives the amendment the effective date, which is the date it was passed by the board.⁸¹ The clerk next notifies the town clerk of each affected town that the amendment was passed and notes the effective date in the proceedings of the county board. Next, the ordinance is published. While the county clerk is attending to this, the zoning administrator should be notifying affected inspectors and property owners of the change in the ordinance.

In a case, (1) where an adopted amendment was amended from its original form (amended by commission or board action or both) or (2) where the adopted amendment was unamended but the amendment attracted valid disapproval resolutions from affected town boards, a different follow-up procedure is used.

Under these circumstances, the county clerk sends two copies of the adopted amendment by registered mail to the clerk of each affected town. The town board has 40 days to submit a disapproval resolution to the county.

If disapproval resolutions have not been received within 40 days after county board passage of the amendment, the amendment goes into effect on the 41st day. The effective date can be earlier if the clerk receives approving resolutions. The effective date in this case is the date the clerk receives the approving resolutions. The county clerk records the effective date of the amendment, sends notice of this to the town clerks, reports the date to the county board, and has the effective date printed in the board proceedings.

In counties with a county executive, the process includes an additional step. An elected county executive has veto power over an amendatory ordinance adopted by the county

Guide to Community Planning In Wisconsin

board.⁸² The amendment has to be presented to the executive, who has until the next meeting of the county board to exercise a veto.⁸³ The veto must be in writing with objections stated. The board then votes whether to override the veto, which the board can do by a two-third vote of the full board membership. The effective date of a zoning amendment subject to executive veto is the date the executive approval is given or the veto is overridden.⁸⁴ The county clerk should handle recording of this effective date in the same manner as effective dates are reported to town clerks and put in the county board proceedings.

The interaction of county executive veto power procedures and town board veto power procedures has not specifically been addressed by the state legislature. The county clerk and county executive probably can agree to a sequence of executive veto then town veto, the reverse, or a simultaneous processing of both veto procedures, as long as it is understood what is happening, the sequence is followed uniformly, and the effective date depends on approvals or non-vetoes by both entities.

2.3 Town, Village, and City Amendment Procedures

2.3.1 Amendment Procedures: Towns Not Exercising Village Powers

Amendments to town zoning ordinances are governed procedurally more by custom of the town government than by detailed statements in state law. The statutes state that the town must hold a hearing on proposed amendment, that the hearing must be preceded by a class 2 notice, and that the amendment must be voted upon by the town board.⁸⁵ There is provision for a "protest petition" with rules on eligibility of petitioners similar to those for the county.⁸⁶ The ordinance amendment must be published like any other town ordinance.

A town needs to establish procedures to clarify the local rules it wishes to follow for initiating the rezoning process and the form the ordinance should take.

2.3.2

Amendment Procedures: Cities, Villages, and Towns Exercising Village Powers⁸⁷

Amendments to city and village zoning ordinances generally follow the same procedures that county zoning amendments follow. Initially, someone introduces a proposed amendment. The amendment proposal must be received by the council or board and referred to the plan commission. Notices are sent out to certain parties.⁸⁸ A hearing is held.⁸⁹ Following the hearing, the plan commission makes a recommendation and report on the amendment proposal to the governing body.⁹⁰ The governing body deliberates on the proposal pursuant to its procedures and votes to adopt, reject, or amend the amendment and then pass or reject it, or re-refer the matter. If the amendment has drawn a valid protest petition, the ordinance may be adopted only by a three-fourths majority vote of the governing body.⁹¹

While zoning amendments by a city or village do not need to be approved by another unit of government, towns operating under village powers must have amendments approved by the county if the county has a zoning ordinance.⁹²

A number of procedures are not specified in the statutes but should be addressed in the local ordinance. For example, the ordinance should identify who can initiate an amendment and the form of the initiating document. The ordinance should also specify procedures for submitting the adopted amendment ordinance to the chief executive,⁹³ recording of action on amendment proposals in municipal records, notice of disposition of amendment proposals to interested parties, and publication of adopted ordinances.⁹⁴

2.4 Spot Zoning

Amending a zoning ordinance to zone a relatively small area for uses significantly different from those allowed in the surrounding area to favor the owner of a particular piece of property is termed "spot zoning." The Wisconsin Supreme Court has defined spot zoning as a rezoning "*whereby a single lot or area is granted*

Guide to Community Planning In Wisconsin

*privileges which are not granted or extended to other land in the vicinity, in the same use district.*⁹⁵

Spot zoning is not necessarily illegal but must be judged on individual circumstances. To determine whether spot zoning is legal, the courts look at the purpose for which the zoning is granted. Since zoning is a legislative function and carries with it a “presumption of validity,” judicial review is limited to determining whether the rezoning is unconstitutional, unreasonable, or discriminatory. Although a court may differ with the wisdom of the zoning authority in granting a rezoning, it cannot substitute its judgment for that of the local authority.⁹⁶

According to the courts, in order for a rezoning to be upheld against an attack as illegal spot zoning, the spot zoning should be for a public purpose and result in public benefit and not solely the personal benefit of the property owner requesting the rezoning.⁹⁷ One way to show that the spot zoning will result in a public benefit is to demonstrate that the rezoning is consistent with long-range planning and is based on considerations that affect the whole community.⁹⁸

Under doctrines developed by the courts, it is difficult to prove an illegal spot zoning. One example of the difficulty appears in a 1990 decision of the Wisconsin Court of Appeals.⁹⁹ The case involved an area of a town where all the lots were zoned R-1 (residential) or RH-1 (rural homes). A property owner applied to have one parcel in the area rezoned to LC-1 (limited commercial) for the operation of an electrical contracting business. The neighbors challenged the rezoning as a spot zoning. The Court of Appeals concluded that the rezoning was not an illegal spot zoning, agreeing with the findings of the trial court that the rezoning was in the public interest and not solely for the benefit of the property owners. According to the trial court, the electrical business provided a public service both to the neighbors and to the entire town.

Although it is unlikely that all rezonings will be successfully challenged in court as illegal spot zonings, the practice of spot zoning is not to be encouraged. If a community finds that it is confronted with numerous requests for spot

zonings, the zoning ordinance should be analyzed. Frequent spot zonings usually indicate that the ordinance needs updating to reflect current community values.

2.5 Conditional and Contract Zoning

Local zoning authorities sometimes become frustrated by the inflexibility of standard zoning. Situations arise where a community feels that rezoning a parcel for a particular use would benefit the community, but, if the rezoning is granted, other less desirable uses could also be developed under the new zoning district. Officials ask, “Can’t we zone for the particular use which this applicant has in mind?”

Frustrations also occur when communities become impressed with the construction plans brought in by a developer seeking a zoning change. While under the influence of these plans and promises, the rezoning is adopted. Later on, the actual development may turn out substantially different from what was expected. Sometimes development does not take place at all and the land is held for speculation with the new zoning classification in place.

In searching for ways to deal with these circumstances, two devices have evolved that are commonly referred to as “contract zoning” and “conditional zoning.” Both attempt to provide guarantees that land being rezoned will be compatible with the surrounding area by imposing special conditions—conditions more precise and more restrictive than those applied to other similarly zoned lands. Controversy about the use of these devices has developed because the state zoning legislation does not mention them. In the absence of any legislative directive, the use of these devices by local units of government is governed by evolving precedents being established by decisions of the Wisconsin Supreme Court.

2.5.1

Contract Zoning

Contract zoning is an agreement between a property owner and a zoning authority, which binds the property owner to special restrictions on the use of the property and, in turn, binds the local

Guide to Community Planning In Wisconsin

zoning authority to grant the rezoning.

Contract zoning has been found to be illegal by the Wisconsin Supreme Court.¹⁰⁰ According to the Court:

A contract made by a zoning authority to zone or rezone or not to zone is illegal and the ordinance is void because a municipality may not surrender its governmental powers and functions or thus inhibit the exercise of its police or legislative powers.

The critical factor in contract zoning is a contractual obligation binding the local legislative body to pass the rezoning amendment if the landowner's contractual promises are kept. To enforce such a contract would require that a court order a legislative body to legislate, a requirement that offends the court's sense of separation of powers between the judicial and the legislative branches of government.

In the case in which the Wisconsin Supreme Court defined contract zoning, the Court concluded that the elements of contract zoning were not present in the case. The case involved a shopping center developer who sought to have the zoning of a parcel of land changed from neighborhood shopping to local business, in order to use the parcel for a bowling alley. The residents in the immediate vicinity approved of the bowling alley but opposed other uses allowable in the local business district. The neighbors pressured city hall to defeat the rezoning. Out of this conflict an agreement was reached between the homeowners and developers which provided that the neighbors would drop their opposition to the rezoning in return for deed restrictions being filed by the developer limiting the use of the parcel to a bowling alley.

Being aware of this agreement and now free from neighborhood opposition, the city rezoned the land to the local business district. The property was later sold to another party, who purchased it to construct a car wash, not knowing of the deed restrictions. The person wishing to build the car wash challenged the restrictions, arguing that they were part of a contract to rezone the property and, therefore, were invalid. The court ruled that it was not contract zoning. While

the Court declared contract zoning invalid, the Court defined it as being limited to instances where the local governing body binds itself to pass a rezoning.

2.5.2 Conditional Zoning

Conditional zoning is the attachment, to a rezoning, of conditions that are not spelled out in the text of the zoning ordinance. The zoning authority makes no promises, but receives a binding agreement from the land owner. The actual agreement is usually a covenant or deed restriction that may be enforced by the local unit of government.

Conditional zoning differs from "true" contract zoning in that the conditions are placed on the property by the landowner in order to convince the local government to pass the rezoning, but the local government does not reciprocate by contracting to pass the rezoning. Conditional zoning is, therefore, legal.

In some instances, conditional zoning operates in the following way: The property owner puts the conditions on the property and then formally applies for the rezoning. The locality, seeing the conditions, passes the rezoning without being legally bound to do so.

But, what if the landowner doesn't trust the local government to match the placing of special conditions with the passing of the rezoning? In this situation, the local governing body can pass the rezoning amendment today, but give the amendment a delayed effective date. The delayed effective date is the future date on which the landowner puts the desired controls on the property by covenant. Exactly this form of conditional zoning, a delayed, contingent effective date, was approved by the Wisconsin Supreme Court.¹⁰¹

Another variation on conditional zoning happens when the community takes the first step by passing the rezoning and putting it into effect immediately, but coupling it with a condition that the rezoning will be repealed if the applicant fails to carry out a condition such as imposing a covenant or making a dedication of land for a street. This arrangement has been treated by the Supreme Court twice. In the first case,¹⁰² the court

Guide to Community Planning In Wisconsin

danced around the issue, wondering if the repealer would be legal without the notices and hearings normally accompanying a zoning change. In a later case,¹⁰³ the court sanctioned a conditional rezoning with an automatic repealer mechanism. This leaves the legal status of the automatic repealer relatively secure in Wisconsin.

The following guidelines and suggestions should be considered by communities contemplating the use of contract or conditional zoning arrangements:

□ The local zoning authority may not be party to a contract binding itself to rezone, although it is permissible for the zoning authority to recognize the conditions and be motivated to rezone because the conditions exist.

□ The conditional rezoning must meet the general test of all rezoning promoting the general safety, welfare, and health of the community and it must not constitute illegal spot zoning. The special conditions attached should be reasonable. To be sure they are reasonable, the special conditions could be based on a community plan. The argument that conditional rezoning disrupts the plan or represents spot zoning will be diminished if similar conditions are called for in the plan.

□ The local zoning ordinance should contain a section explaining the intent and form of conditional zoning provisions. If the provisions contain an automatic repealer clause providing that the zoning reverts back to the original zoning if the conditions are not met within a set time limit, a specific time limit should be included. Also, if this form is to be used, notice should be given and a public hearing conducted on repeal to avoid a possible challenge on due process grounds. If the form of the provisions is that the zoning becomes effective only upon the conditions being met within a time limit, the time limit should be specified in the ordinance, and definite standards for compliance should be provided.

□ Conditional zoning should be used only to deal with particular circumstances that arise at the time of rezoning. If a unit of government wants to put conditions on certain uses of land whenever they arise, other methods which permit

application of conditions are available, such as special exceptions and conditional uses.

2.6 The Comprehensive Revision Amendment

A community may decide that its present zoning ordinance is seriously out of date and needs wholesale revamping. One strategy to accomplish this is to draft a new ordinance and enact it as a replacement for the old, outdated code. The old ordinance is repealed; the new ordinance replaces the old.

Under city and village law (and for towns exercising village powers), the statutes authorize repeal and reenactment of "an entire district plan and all zoning regulations" in accord with procedures for enacting new zoning ordinances.¹⁰⁴ Repeal and reenactment of *parts* of a district plan and regulations are handled procedurally under amendment procedures.¹⁰⁵

For towns exercising general town zoning authority, the statutes provide that towns may, by a single ordinance, comprehensively revise an existing town zoning ordinance following the procedures for the adoption of a zoning ordinance.¹⁰⁶ The statutes define "comprehensively revise" as incorporating "numerous and substantial changes."¹⁰⁷

The comprehensive revision concept poses unique problems at the county level, insofar as county general zoning is involved. The problem concerns town veto or approval powers and procedures. If a comprehensive revision is handled as a new ordinance enactment, each town has to approve or ratify the "going into effect" of the zoning in that town. Silence on the part of a town is the same as a "no" vote. On the other hand, if the new code is treated as an amendment (especially a text amendment), the town veto power applies on a majority role basis among affected towns, and town boards need to pass veto resolutions to effect their dissents. Silence here is the same as a "yes" vote. So, for counties it is important substantively and procedurally whether the comprehensive revision is treated as a new enactment or as an ordinary amendment.

The zoning enabling law for counties

Guide to Community Planning In Wisconsin

provides:

The [county] board may by a single ordinance repeal an existing county zoning ordinance and reenact a comprehensive revision thereto in accordance with this section. "Comprehensive revision" . . . means a complete rewriting of an existing zoning ordinance which changes numerous zoning provisions and alters or adds zoning districts. The comprehensive revision may provide that the existing ordinance shall remain in effect in a town for a period of up to one year or until the comprehensive revision is approved by the town board, whichever period is shorter. If the town board fails to approve the comprehensive revision within a year neither the existing ordinance nor the comprehensive revision shall be in force in that town.¹⁰⁸

Therefore, under a comprehensive revision, if the county board grants the one year holdover period, and the year elapses, and a previously zoned town has not ratified the new code, the town ceases to be covered by county zoning at the end of the year. The town can, however, rejoin county zoning under the revised

ordinance at any later time by passing a town board resolution.¹⁰⁹

The law governing comprehensive revisions for counties does not clearly define what constitutes a comprehensive revision. Could a county pass a wholesale re-write as a simple text amendment, either in one package, or by breaking it into smaller segments passed sequentially? Doing so changes the ground rules of county-town relations explained earlier. A 1994 Attorney General's opinion states that adding one new zoning district does not constitute a comprehensive revision.¹¹⁰ Counties can therefore make incremental changes through the amendment process where text changes are governed by a majority-rule town veto procedure and the map changes are subject to the town veto procedure.

Guide to Community Planning In Wisconsin

3. Variations to Traditional Zoning

Zoning became established in an era in which the key purpose for land use regulation was to separate residential from commercial from industrial activities. (This segregation of uses became known as Euclidian zoning after the court case in which its validity was upheld.) Over the years the factors affecting land use have changed. Advances in transportation and communication, the migration of people and industry from urban centers to suburban and rural locations, changes in lifestyles and living arrangements, and the changing demands for natural resources present a challenge to traditional Euclidian zoning techniques.

Despite these changes, zoning has remained the most widely used land use regulatory tool. Rather than overhauling the entire zoning concept, planners and lawyers have developed new regulatory techniques within the framework of traditional zoning. These tools have several common characteristics. First, flexible zoning arrangements are generally not keyed to specific districts on the zoning map--the arrangements can usually be applied throughout the locality. A second characteristic is that flexible zoning techniques tailor rules to specific sites and often allow mixtures of uses and/or densities.

Depending on the particular technique, flexible zoning proposals are processed either through amendments or through special exceptions/conditional use procedures. Each time a permit application for one of these use types is received, a certain amount of discretionary decision-making is required.

The discretionary aspect of flexible zoning techniques is an important matter. The trend to incorporate more discretionary decision-making into zoning means that the community is granting final development permission in response to particular applications, without prescribing detailed standards in advance. Flexible zoning tools entail negotiation between the developer and the administering agency to tailor development proposals to community needs. Professional staff, the local plan commission, and the governing

body all become involved in the evaluation/negotiation process.

It is desirable for discretionary zoning devices to be supported by a plan. Otherwise decisions may be inconsistent and arbitrary. Consistent decision making is made easier by the existence of a plan which articulates the policy base of the community. In addition, courts are likely to give more credence to discretionary decisions that bear a direct relationship to stated community goals and objectives.

3.1 Planned Unit Developments

Planned unit development (PUD) is both a type of development and a regulatory process. A PUD is planned and built as a unit within which a variety of compatible land uses may be developed at varying densities and subject to more flexible setback, design, and open space requirements than afforded by traditional zoning. Flexibility in site design allows PUD buildings to be clustered, which can bring about savings in energy, service costs to the municipality, and construction costs to the homeowner.

It promotes mixtures of housing types and densities to achieve maximum potential from a site suited to residential purposes, allows housing to be combined with complementing uses such as schools and neighborhood shopping centers, and allows better design and arrangement of open space. By encouraging clustering of houses and other construction, as much as a third of the land may be preserved, thus allowing retention of more natural features.

How can all this flexibility be built into the zoning process without destroying the credibility of the ordinance and its application to more traditional development types? The answer to this question lies partly within the regulatory process involved in attaining permission to develop a PUD and partly within the PUD standards which the ordinance must establish.

Guide to Community Planning In Wisconsin

3.1.1 The Regulatory Process

Cities, villages, and towns exercising zoning authority under village powers have the authority under Wisconsin law to establish “planned development districts” which are the same as PUDs. County zoning ordinances can also establish PUDs.¹¹¹

According to the statutes for cities, villages, and towns with village powers, planned development districts are special districts:

“with regulations in each, which . . . will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and insure adequate standards of construction and planning. . . .”¹¹²

The statutes provide that cities, villages, and towns exercising zoning under village powers can only establish PUDs with the consent of the property owners. The law also specifies that the regulations governing each district do not have to be uniform. This is contrary to the requirements of traditional zoning which require uniform regulations within the districts. The specific regulatory framework will be outlined in local ordinances.

Permission to build a PUD is often obtained as by a special permit similar to a conditional use permit. As a conditional use, it requires approval by the governing body, the plan commission or the board of appeals, depending on the ordinance. PUDs should be listed in the ordinance as a conditional use allowable in certain zoning districts.¹¹³ A potential PUD developer would consult the zoning ordinance text and then determine from the zoning map where PUDs might be located. The placement of the PUD must also comport with the zoning restrictions of the designated districts.¹¹⁴ In such cases, no zoning (map) amendment would be necessary, although the governing body might wish to retain final

approval authority. In other communities, approval of a PUD may require rezoning the land (into a PUD district).

Virtually all PUD regulations involve some kind of site plan review. In fact, it is the element of the application process that distinguishes PUDs from conventional developments. It is here that development flexibility, negotiation, and discretionary application of standards come into play.

It is also in site plan review that special care must be taken to insure fairness in the decision making process. Care must be taken to involve developers, public officials, and the general public in the PUD process and to assure that all receive a fair opportunity to participate in the process without abusing the interests of others. Time is critical because it means money to both the developer and the public. Therefore, the review process should be efficient, and complex procedures or excessive steps avoided. The PUD ordinance should clearly spell out the review process, including the appropriate roles for various public and private parties, and should include procedural guidelines.

The most important characteristic of the PUD review process is negotiation between the public and the developer. Negotiation takes place at three key points: the pre-application conference, review of the preliminary development plan, and final development plan approval.

At the pre-application conference, the developer consults with members of the planning staff and heads of departments to resolve any questions regarding ordinance interpretation, to clarify steps, etc. The developer will also want to obtain staff views on what the decision making body is likely to approve. This is an important step in the site review process and can save considerable time later. Local governments should make the pre-application conference a requirement of PUD regulations.

The preliminary development plan negotiations are the most critical to the whole PUD process. These negotiations result in final agreement between the developer and the planning staff. They should also permit members of the public to express views at a public hearing and

Guide to Community Planning In Wisconsin

may result in the granting of any necessary zoning change.

The preliminary development plan is submitted within a certain time after formal application for a PUD approval. It includes specific documents and maps giving a legal description of the project, a detailed site plan, and supporting maps.

The plan commission holds a public hearing within a specified time period after submission. At this hearing the developer presents the PUD proposal, and the planning recommendations are made available for public review.

Following the hearing, the commission may approve, approve with conditions, or disapprove the PUD application. If approved, and if a rezoning is required according to the particular ordinance, the application and supporting documents are sent to the governing body for final action.

The final development plan represents the detailed engineering drawings of the site. This is the formalization of the preliminary plans and should involve negotiations only on details of project execution. The plan commission would, at this time, approve recording the plat.

A local PUD ordinance should make provisions for possible amendments to the final development plan because unforeseen conditions might necessitate altering the plan at some point after approval. Provision should also be made to assure that the developer carries out the approved plan.

3.1.2 Standards

Despite the advantage of flexibility with the PUD process, standards are needed to protect public health and safety and to assure design quality and conformance to an overall plan.

Examples of standards or criteria to be included in PUD regulations are these:

- Developer provision of land and capital improvements for public uses;
- Dimensions and grading of parcels and a ceiling on the total number of structures permitted in the development;

- Permissible combinations of development (specifying compatible uses);
- Population density limits;
- The extent and location of open space;
- Methods to be employed to control further subdivision or use changes;
- Scheduling of development;
- Preservation of architectural, scenic, historic, or natural features of the area.

Besides these standards, additional guidance for this discretionary zoning process should be provided by the community's plan. The plan provides the overall context within which the proposed development needs to fit.

3.2 Floating Zones

In content, a floating zone is the same as a conventional zone. It describes the permitted uses, setback requirements, and other standards to be applied in the district. Unlike conventional zoning districts, however, the floating zone is not designated on the zoning map. Once enacted into law it "floats" over the community until, upon approval of an application, it is "brought down to earth" to be affixed to a particular parcel through an amendment to the zoning map.

The floating zone is particularly useful in situations where a community wishes to permit a limited number of specific uses (large shopping centers, for example) but does not wish to map their locations in advance. It also allows for locating use types which cannot be anticipated but which the plan would like to provide for. For instance, a community may have an anti-industry policy and no industrial zone in its local ordinance. It may, however, be amenable to a high technology, low-impact industry under certain conditions. The floating zone allows this kind of control and flexibility.

The legal status of floating zones tends to be based not on the concept as such, but on the conditions under which floating zones can be used by developers. Because they are often used to permit more intensive development of a site in a less intensive, conventionally zoned area (for example, multi-family housing in a area zoned

Guide to Community Planning In Wisconsin

single family), the granting of a floating zone permit may be challenged as a spot zoning. Floating zone conditions specified in the text of the ordinance should therefore address the public interest and set forth standards to insure conformance with good land use planning.

The procedure for legislative approval of floating zones is similar to that of conventional rezonings. The major distinction is in the determination of the appropriateness in the change in use classifications. With a floating zone application, the question is not whether the existing zoning is reasonable, but whether the conditions specified for granting the rezoning have been met. This is determined through a site plan review process similar to that for PUDs. The floating zone permit should be denied if the developer fails to show that the specified conditions would be met.

The text of the zoning ordinance should establish clear standards for floating zone approval. This protects the legislative body from challenges of invalid spot zoning and, to some degree, reassures landowners who may feel that floating zones take away the "protection" afforded them by traditional zoning districts.

Standards can also aid in refuting claims that floating zones violate comprehensive planning requirements. Such claims cannot be substantiated where the ordinance describes the purpose and criteria for establishing floating zones, explicitly identifying the types of permitted development and listing the conditions placed on that development.

3.3 Performance Zoning

Performance zoning uses performance standards to regulate development. Performance standards are zoning controls that regulate the effects or impacts of a proposed development or activity on the community, instead of separating uses into various zones. The standards often relate to a site's development capability. In agricultural areas, for example, performance zoning could be used to limit development on prime agricultural soils and allow development on lower quality soils. Performance zoning is closely

tied to the planning process because the local government must identify planning goals and then write regulations that specifically achieve those goals. Performance zoning is often used in industrial zoning to control impacts such as noise, odors, smoke, and other side effects from industrial activity.

3.4 Bonus and Incentive Zoning

Bonus and incentive zoning allows local government to grant a bonus, usually in the form of density or the size of the development, in exchange for amenities (such as increased open space, pedestrian paths, etc.) or a higher quality of required provisions (enhanced stormwater management facilities, landscaping, etc.) provided by the developer not required by traditional zoning. Density bonuses may be offered to encourage cluster development. In many instances, the use of bonus and incentive zoning is tied to a site plan approval process.

3.5 Overlay Zoning

Overlay zones are designed to protect important resources and sensitive areas. Wisconsin's mandated floodplain zoning program is an example of overlay zoning. The requirements of overlay zoning apply in addition to the underlying zoning regulations. The underlying zoning regulates the type of uses permitted, such as residential or commercial, while the overlay zone imposes specific requirements to provide additional protection.

3.6 Mixed Use Zoning

Mixed use zoning is an effective way to enhance existing urban and suburban areas and encourage infill development. Older commercial areas within communities, for example, often include an existing mixture of uses--residential, commercial, public, etc. Mixed use zoning recognizes the existing mixture and encourages its continuance and may offer an alternative to wrestling with potential nonconforming use complexities.

Guide to Community Planning In Wisconsin

3.7 Cluster (or Average Density) Zoning

Cluster development can be used in suburban and developing rural areas to protect environmentally sensitive features or to provide large open space areas. Dwellings are grouped on the most buildable portion of a development site, with the remainder of the site preserved as open space. Smaller building lots are permitted, with the lots grouped closer together. However, the total number of buildings allowed on the site cannot exceed the number otherwise permitted by the zoning district.

Cluster zoning may be used as an overlay zone to provide a development option in areas the community identifies as suitable for cluster development. Cluster development can also be the

required type of development in areas specified by the community.

3.8 Inclusionary Zoning

Inclusionary zoning provides incentives to developers to provide affordable housing as part of a proposed development project. The incentive usually is a density bonus which allows the developer to build at higher densities than would normally be allowed. In exchange for the higher density, the developer must build a specified number of low and moderate income dwelling units.

Guide to Community Planning In Wisconsin

4. Administering a Zoning Program

In many Wisconsin communities the first zoning ordinances were passed decades ago, with no provision made for administration. This omission occurred partly because money was scarce, partly because society had limited experience with administering regulations, and partly because people really felt the regulations were capable of "self-administration." If zoning rules are perfectly clear, and if these rules fit every property in a reasonably satisfactory fashion, and if every affected person knows about the rules and is willing to comply, then perhaps rules can be self-administering. Realistically, however, we know these "ifs" are not universally feasible. Zoning requires a structure of administration and administrative processes to apply, adjust, and enforce the words of the ordinance and the intent of its enactors. This section explains the structure and processes of zoning administration.

4.1 Structure for Administration

Following the structure of the 1920's Standard State Zoning Enabling Act, responsibility for administering the local zoning ordinance under the *Wisconsin Statutes* is divided among three agencies: the local legislative body, the plan commission, and the board of appeals/adjustment. Zoning and other land use ordinances are passed by the *local legislative body* under authorization (or direction, in the case of mandatory codes) provided by the state legislature. This indicates that the state and the local legislative bodies are part of the administrative structure of code work. The local legislative body, acting within bounds created by state law, passes and amends ordinances, appropriates funds and creates positions for other administrative actors, and oversees the whole process of ordinance work.

The *plan commission* has these zoning functions: to advise the local legislative body on development of ordinances and on amendments; to oversee the planning and zoning staff; to hold certain hearings; to plan; and, where specifically assigned this zoning function, to pass on special

exceptions or conditional uses.

The *board of appeals/adjustment* has two mandatory functions in zoning and one other optional, but still important, function. The two mandatory functions are to handle variances and to handle administrative appeals. The optional function is to handle special exceptions or conditional uses.

In addition to these agencies, the *zoning staff* has responsibilities for aiding and advising the boards named above, for deciding permitted use permit questions, for issuing other approvals as decided by the board of adjustment/appeals or plan commission, and for monitoring compliance and initiating enforcement actions.

A zoning program requires all these administrative steps and administrative actors and units. The program also requires actions by the community's attorney and the courts. Ultimately, of course, the whole apparatus rests on the citizens whose consent, through their elected officials, gives rise to the ordinances and whose needs the program seeks to serve.

4.2 Process of Administration

Zoning administration means a set of activities that occur after the ordinance is adopted and that bring the ordinance to bear on landowner decisions on property use. These activities involve the professional code- administrative staff and a variety of other actors. This section will present several issues that arise in the course of ordinance administration.

4.2.1 Community Education

A community cannot expect its zoning ordinance to guide landowners' conduct if landowners do not know of its existence. The job of educating the public as to zoning requirements begins with the mandatory legal publication of the newly adopted code. Zoning officials then need to publish copies of the ordinance and summaries of its main features, and make these available at locations within the community, such as libraries, real estate offices, and lending institutions.

Guide to Community Planning In Wisconsin

Another part of community education involves informing the community of the underlying reasons for the zoning ordinance and the avenues that can be pursued if citizens want to change it. While passage of the code signals a consensus within the community on the need for zoning, that community consensus can fade almost overnight as people and attitudes shift. Officials who believe in the zoning program and who accept leadership as a part of their civic roles will seek constantly to monitor and influence community opinion to maintain support for the zoning program.

4.2.2 Applying the Code

Some parts of a zoning ordinance are set forth in clear-cut, specific language that can be understood by most people. If a property owner is covered by those parts of the code, he/she should be able to read the document and know what uses are allowable on a parcel.

Not every property owner, however, has a copy of an up-to-date ordinance. This creates a need for an inquiry service by which zoning officials can be asked to recite, find, and explain pertinent code sections in response to questions about particular properties and development conditions. The handling of such inquiries is part of zoning administration. Inquiries are made by phone or letter, during the course of conversations at the zoning office, on the landowner's site, and elsewhere.

Processing of such inquiries is a logical and necessary task, although problems often arise. As the interaction between the inquiring citizen and the zoning official becomes more informal, the risk of misinterpretation grows. People are familiar with the general advice on important legal matters: "get it in writing." The same reasoning underlies a preference in code administration to have inquiries presented in writing, in a format that creates a full picture of the questioner's problem or situation, and to have the answer given also in writing.¹¹⁵

The concept of a formal inquire/response procedure leads us to the zoning permit. A zoning permit application is a formal description by the property owner of a proposed use or development

proposal. Submission of the application is treated as an inquiry.

A permit approval is a formal response stating that the development described in the application is legal. Conditions placed on the permit are summarizations of the sections of the code that apply to the project. A permit denial is a formal statement that the project described in the application is not legal under the code.

Sometimes permit applications are neither denied nor approved. This can happen when the intended use is listed as a "special exception" or "conditional use." In this situation the permit cannot be approved by the staff administrator. Instead, the permit application will be held in abeyance pending processing of an application for the conditional use approval. If such an approval is granted, the permit can be issued.

In the course of applying code sections to permit applications, disagreements can arise over the meaning of words and over the application of precise terms to differing development proposals and properties. In anticipation of such disagreements, the law provides for an administrative appeal of staff interpretive decisions.¹¹⁶ Applying the code, therefore, can be a time consuming process. It is important for communities to see that they have an adequately staffed zoning office.

4.2.3 Points on Permit *What Ifs?*

What if the county official responsible for issuing permits makes a mistake and issues a permit for a use or a dimensional situation that really does not comply with the ordinance? Can a mistakenly issued permit be revoked when the mistake is discovered?

Yes.

What if the building is built before the mistake is discovered? Can the owner be prosecuted for ordinance violation?

Yes. An erroneously issued permit does not shield an owner from penalty for violating the code. In most cases the owner will argue (usually successfully) that it is unjust to penalize him or her for the violation because the project was built in reliance on the permit. But a court can throw out this argument, and usually will if there is any

Guide to Community Planning In Wisconsin

reason to think the owner knew or should have known that the permit was issued mistakenly.

What if someone builds a structure that complies perfectly with the use and dimensional rules, but the person never got a permit?

If the ordinance is carefully written, it will say that failure to get a permit is a violation in its own right, even if the "use" is legal. The owner is liable for prosecution for non-compliance with the permit requirement.

What if the owner and the zoning official disagree on interpretation of the ordinance? For example, the ordinance says garages are permitted on residential lots as an accessory to a house. The applicant applies to build a 5 stall garage big enough to store and repair semi-tractors. The zoning official interprets the term "garage" as including ordinary household car garages and not big truck garages and turns down the application.

What happens? First, the zoning official has done his or her job, which is to interpret the ordinance and make decisions. If the applicant simply goes ahead and builds the garage in the face of the permit denial, the county can prosecute, and the owner's position in court will be weak because the owner acted in defiance of the permit decision (as well as in opposition to the ordinance) without pursuing the several routes to legal relief.

However, the applicant has several ways to appeal the denial. The applicant can petition the board of adjustment/appeals for an appeal of the decision. The board must hold a hearing, review the decision and make its own decision whether or not the ordinance allows the sort of garage the applicant wants. This decision will then become the official decision superseding (or upholding) the zoning official's decision. Another appeal option is to challenge the decision in court.

A final option is for the applicant to petition the county board to amend the ordinance to add truck garages specifically to the use list for the residential district. If such an amendment were passed, the applicant could apply again and get the permit.

What if the zoning official has trouble interpreting the ordinance? Take the garage

example. The code said "garage." On what basis did the official know whether "garage" meant a big truck repair building?

To be fair and proper and to have interpretive decisions stand up on appeal, the decisions should be based on words in the code and on the intent of the code. Does the code modify the word "garage"? Does it say "automobile garage" or garages "ordinarily and customarily found in residential areas?" Does the ordinance, as a whole or in the particular district, have a statement of intent? Does that statement have any bearing on the garage issue? Can an intent be read into the rules of the district even if there is no statement of intent? The district may be very strict. No commercial or industrial activities at all are allowed. This suggests an intent to shape a district of purely residential character and gives a possible basis for denying a commercial use. Does the ordinance provide for truck storage and repair garages in some other district? Does this show an intent to place the use in the highway commercial zone and, by implication, not in the residential zone?

What if several permits are needed to do what the applicant wants? The zoning checks out and a permit can be issued consistent with the zoning ordinance. But what if there is a question regarding whether the parcel was subdivided properly, or whether a permit has been issued or needs to be issued now for sanitary facilities?

The answers depend entirely on the local ordinances. The local ordinances have to say in what order permits are issued and whether one permit can be held up until another permit is issued, and whether one permit is conditional on issuance of another permit.

What if the use is one that is exempt from a permit requirement?

Many ordinances exempt minor improvements and farm buildings. The use still has to comply with the use and dimensional rules even if there is no need to take out a permit.

For how long is a permit good?

This is set by local ordinance. If the ordinance does not say anything, the general rule is that the permit is good for as long as the ordinance remains unchanged as to the intended

Guide to Community Planning In Wisconsin

project. If the ordinance changes and the project has not begun or is not so far along that it is nearly impossible to change, the applicant should reapply for a new or amended permit reflecting the new rules that apply to the project.

4.2.4 Conditional Uses

A conditional use allows a property owner to put property to a use which the ordinance *expressly permits* if certain conditions specified in the zoning ordinance are met.¹¹⁷ Courts have interpreted special exceptions, special uses, and conditional uses as synonymous.¹¹⁸

Conditional uses are certain land use types which are of such a special nature and the impacts of which are so dependent on specific circumstances that determination in advance of where and when they should be permitted is impractical. The authority to grant conditional uses may be exercised by the governing body of the community or it may be delegated to the plan commission or the board of adjustment/appeals.¹¹⁹ The entity authorized to issue conditional uses needs to be specified in the zoning ordinance.

To be considered a conditional use, the use must be listed as such in the zoning ordinance, along with the standards and conditions which it must meet. The conditions are provided to protect adjacent landowners, to handle troublesome uses, and to protect the character of the surrounding area. The approving body cannot legally allow a conditional use if the conditions listed in the ordinance or required by the board do not exist or cannot be met. The applicant for a conditional use has the burden of showing why the conditional use should be approved.¹²⁰ The application for the conditional use permit must also be complete at the time notice of the public hearing on the permit is first given, unless the ordinance expressly permits a later submission.¹²¹

As far as possible, the kinds of conditions that can be attached to a special exception should be identified in the ordinance. The text for each zoning district might contain a section describing the conditional uses permitted in that district and enumerate the conditions under which such uses might be allowed. As an alternative, the conditions and standards for special exceptions

might be described in a separate section of the ordinance. The standards can be very general, such as the need to promote “the health, safety and welfare of the community.”¹²²

The approving body has several options when making its determination on applications for conditional use permits. It may either reject the application entirely, approve the application in full or partially, or approve the application subject to conditions. Additional conditions imposed by the approving body might include the time period in which all or part of the use may be permitted, increased setback and yard dimensions, construction sureties, deed restrictions, etc.

4.3 Adjusting the Code

In the last section, it was assumed the zoning ordinance was relatively specific and precise in setting rules regarding the use intended by a hypothetical property owner. Through a process of inquiry and response, the code was applied to the situation.

Assumptions are changed in this section. We assume now that the rules that apply are either unclear and, therefore, need to be adjusted to give more specificity, or are unsatisfactory--that is, the rules, while clear, produce a statement that doesn't make sense, at least to the property owner, who thinks the community might alter the rules if such a request were made. Either situation--unclear rules or unsatisfactory rules--gives rise to a request to *adjust* the rules. Adjustments to the code can be accomplished by *variance* or *rezoning*, or through an *administrative appeal*.

Zoning law makes a clear distinction between rezoning, variances, and administrative appeals. Each has its own standards and criteria and purpose. Despite these differentiations, the concepts are often confused with each other and with conditional uses discussed above. The following discussion attempts to clarify the distinctions between them.

4.3.1 Rezoning

Rezonings are formal changes in the text or map of the zoning ordinance. They can be site-specific or they can be general or community wide

Guide to Community Planning In Wisconsin

in effect. The process of rezoning occurs through an amendment to the zoning ordinance. Section 2 of this chapter discusses amending the zoning ordinance. When zoning requirements impose an undue hardship for all properties within a neighborhood, it is more appropriate to seek a rezoning for that area rather than petitioning for a variance.¹²³

4.3.2 Variances

A variance authorizes the use or development of a specific site in a manner which is *prohibited by the zoning ordinance* when a property owner can show unique, localized physical problems which give rise to hardship that can be overcome by varying the application of the ordinance without harming the purpose and intent of the ordinance.¹²⁴ The variance procedure allows the impact of general rules to be varied in response to unusual local circumstances without involving the governing body in amendment procedures for each such localized situation. Variances are decided by the board of adjustment/appeals.

There are two kinds of variances--use variances and area variances. A use variance is one which permits a use of land other than the use prescribed by the zoning ordinance. Area variances deal with the standards in the zoning ordinances for things such as setbacks, height of structures, and density. Use variances are rarely granted because they may involve changing the character of an area. The Wisconsin Supreme Court has noted that “variances should be granted sparingly.”¹²⁵

Variances can be granted where, owing to special conditions, a literal enforcement of the provisions or the ordinance will result in “unnecessary hardship.”¹²⁶ For use variances, “unnecessary hardship” is defined as “a situation where, in the absence of a variance, no feasible use can be made of the land.”¹²⁷

For area variances, the Wisconsin Supreme Court has noted the need to judge the hardship against the purpose of the zoning law.¹²⁸ In the case of shoreland zoning ordinances, the Wisconsin Supreme Court recently held that an “unnecessary hardship” is defined as “when the

applicant has demonstrated that he or she will have no reasonable use of the property, in the absence of a variance.”¹²⁹

It is unclear whether this definition would apply in all area variance cases. In earlier cases, the court had defined the circumstances required to exist for the granting of an area variance as “whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.”¹³⁰

Decisions on whether or not to grant variances from the zoning ordinance depend on the facts in a given case. The courts have developed additional rules for understanding what is meant by “unnecessary hardship.”

For example, in no case may a variance be granted solely as a convenience to the property owner. In one case, a homeowner wished to be granted a variance from the minimum side-yard requirements of the county ordinance in order to build a porch to “enjoy lake living, to accommodate his expanded family, and to increase the value of his land.” The court held that none of these reasons was sufficient to justify the granting of a variance based on a practical difficulty or unnecessary hardship. Thus, practical difficulty and unnecessary hardship do not include conditions personal to the owner of the land, but rather to the conditions especially affecting the lot in question.¹³¹

In other cases, the courts have held that a variance, therefore, runs with the land and not with the applicant for the variance.¹³² Self-created hardship cannot qualify as the basis for a variance.¹³³ In addition, the courts have said that concerns over the most profitable use of property are not proper grounds for granting a variance.¹³⁴ Finally, a variance cannot be contrary to the public interest.¹³⁵

Other general rules which board members should keep in mind include:

❑ The board may not make any decision that is contrary to the purpose and intent of the

Guide to Community Planning In Wisconsin

zoning ordinance. For example, consider an applicant for a building permit in a residence district who finds that the 30-ft. front yard requirement of the ordinance cannot be applied to the particular lot if it is to be used for residential purposes. The lot may be too steep to provide the required yard and still utilize practical construction methods. In this case, the board may review the facts relating to the particular lot and might permit the front yard requirement to be reduced from 30 to 20 feet without destroying the intent of the ordinance. But, the board first must determine that the 20 foot front yard on this single property will not significantly disrupt the appearance of the neighborhood or block the vision of neighbors or conflict with any of the other purposes which support the general setback rule of 30 feet.

❑ Variances are not changes in the ordinance. They are rather modifications in the application of a provision of the ordinance to a particular parcel of land. In the above example, the ordinance, on its face, still requires a 30-ft. front yard in the residence district. Permission to decrease the yard size to 20 feet extends only to the property which was the subject of the variance.

❑ A situation that applies generally throughout an area is not treated as a variance. For example, suppose a group of property owners adjoining the homebuilder in the above example applied for a variance based on the same reason. Such matters should be handled through an amendment to the zoning ordinance and not by wholesale application of the discretionary power of the board of zoning adjustment/appeals. There is no basis for granting a variance from the provisions of a zoning ordinance unless a particular parcel of land represents peculiar and special conditions.

❑ Unnecessary hardship must be proven. There is no hard and fast definition of "unnecessary hardship." A margin of discretion is left to the board of adjustment/appeals. The burden of proving an unnecessary hardship rests upon the applicant, and without such proof, a variance must be denied. The hardship must also be created by the ordinance. If the hardship is caused by actions of the owner, the applicant, or

some other person, relief by means of variance may not be granted. Such a situation would arise where hardships result from improvements made in violation of the zoning ordinance, either willfully or innocently, in which case a variance cannot be granted.

Boards of adjustment/appeals can develop rules for the conduct of their proceedings. These rules can help the board operate more efficiently. For example, the board can adopt a rule limiting the rehearing of variance cases that it has decided previously, unless the property owner can show a substantial change in conditions.¹³⁶

4.3.3 Administrative Appeals

An administrative appeal begins when the applicant for a zoning permit feels that an administrative official made a mistake in interpreting the zoning ordinance. For example, the zoning administrator denies a zoning permit based on his/her interpretation of the ordinance. The permit applicant sees a different interpretation (one which would allow the permit to be granted) and appeals the matter. The board of adjustment/appeals must determine whose interpretation of the ordinance is "correct."

Similar disagreements may arise over the location of zoning district boundaries on the zoning maps. Certain zoning district boundaries are difficult to locate on the land because they are irregular. For example, floodplain and shoreland district boundaries usually are established by measurement back from the high water mark of lakes and streams. The boundaries of prime agricultural or conservancy districts, which sometimes are determined by the presence or absence of certain soils or plant species, may also be irregular. The zoning administrator must make an initial determination of the location of these boundaries in order to make a decision on an application. If an applicant is dissatisfied with the administrator's determination, he or she may appeal it to the board of adjustment.

Other examples of ordinance interpretations which might be appealed include questions of highway or right-of-way locations; questions of height, i.e. whether it is measured from the curb, nearby grades, finished grade, or

Guide to Community Planning In Wisconsin

some other level; parking requirements; and the status of non-conforming buildings or uses.

In making decisions on administrative appeal cases, the board should focus on the legislative intent of the zoning ordinance. Although its determinations are quasi-judicial in nature, the board functions primarily as an administrative arm of the local legislative body. Its duty is to preserve the meaning and intent of the zoning regulations, so far as these can be determined.

Each of these processes is different from the others, although each can result in an adjustment of rules as applied to particular properties. Administration of these adjustment devices involves these steps:

1. A party applies for the adjustment. The application will often be in response to denial of a zoning permit for the proposed use. A person need not be denied a zoning permit to apply for a zoning amendment approval.
2. The application is channeled by the code administrator to the appropriate board or commission. A variance application will go to the board of adjustment; the amendment petition will go to the plan commission first and then to the local legislative body.
3. After the required notices, hearing, participation by affected interests, meetings, and vote, the decision unit renders its decision.
4. If that decision satisfies the applicant, an application for a zoning permit will be made and processed under the rules as adjusted.
5. If the decision does not satisfy the applicant, he/she may consider an appeal.

4.4 Nonconformities

The original purpose behind zoning was to divide a community into districts, each of which was characterized by one particular type of land use. Uniformity was the goal. Zoning created a fixed developmental hierarchy which placed the single-family residential district at the top. A

primary purpose of zoning was to protect classes of development, in particular single-family residences, from encroachment by undesirable uses that could lower property values.

The communities on which zoning was superimposed, however, had not followed a neat arrangement of development. Uses were in fact mixed--stores were located in residential areas, junkyards in commercial districts, etc. Because the purpose of zoning was to insure that all uses in a particular district were similar to each other, existing dissimilar uses detracted from that purpose, just as new dissimilar uses prohibited under the zoning ordinance undermine the justification for zoning. It therefore became important for the proponents of zoning to get rid of these "nonconforming" uses. Zoning proponents suggested an approach whereby land uses that were inconsistent with zoning regulations would be allowed to continue, but they would be subject to restrictions that would limit their expansion and cause them to disappear gradually.

Although the Standard Zoning Enabling Act, upon which Wisconsin's zoning enabling law is based, included no mention of nonconforming uses, local zoning ordinances appeared which regulated nonconforming uses by restricting (1) change of use, (2) alteration, repair or restoration of structures, and (3) restoration of a use after abandonment or discontinuance. Statutory definitions of a nonconforming use were added later. These definitions sought to balance the need for uniformity with the desire to protect investments that landowners had legitimately made before the ordinance was passed.

Difficulties soon arose defining "nonconforming use." For example, should a commercial use be a nonconforming use if it differs from what could be newly constructed because it provides too few parking spaces? Local governments and the courts were reluctant to exert strong pressure on nonconforming uses. Also, issues of equity arose in situations where local governments frequently grant variances for new uses that are inconsistent with the zoning ordinance. How could the local government justify eliminating existing uses that are similarly

Guide to Community Planning In Wisconsin

inconsistent with the zoning ordinance? Tensions arose regarding nonconforming uses that still exist today.

At a general level, the decisions of the Wisconsin courts reflect the historic aversion to nonconforming uses. According to the courts, "[t]he law seeks to restrict rather than increase nonconforming uses and to eliminate such uses as speedily as possible."¹³⁷ The general policy rationales followed by the courts, however, is not totally consistent with the protections afforded nonconforming uses by the statutes and in local ordinances.

Adding to the difficulty of dealing with nonconforming uses is the fact that today, in many cases, the rationale behind the development of the original concept of nonconforming uses no longer is valid. There is no longer a widespread belief among planners that mixtures of uses are bad. Many nonconforming uses are profitable because of their nonconforming status and thus are unlikely to be abandoned forever. Many older nonconforming uses have been around long enough that their original owner's investment has been returned and the present owners are reaping returns on the investments they made in full awareness of the nonconformity. Thus the old arguments are not always convincing today.

4.4.1 Statutory Definitions

Nonconforming uses have certain legal protections afforded directly by the *Wisconsin Statutes* with which local ordinances cannot interfere. There is, also, a range of legal protections that can be granted optionally to nonconforming uses by local ordinance and that can be denied by local ordinances.

The statutes in Wisconsin on nonconforming uses are complicated and confusing. The statutes differ depending upon the enabling law a community follows. Over time, three general concepts of nonconformity have developed--nonconforming uses, nonconforming structures, and nonconforming lots. The general zoning enabling statutes only address nonconforming uses.

4.4.1.1. *Nonconforming Use*

This is the most commonly used term. It relates to a *use* not permitted by the zoning ordinance and reflects the original concept of nonconforming use developed in the 1920s. The statutes define nonconforming uses as follows:

☐ **City and villages:** "*The lawful use of a building or premises, existing at the time of the adoption or amendment of a zoning ordinance, although such use does not conform to the provisions of the ordinance.*"¹³⁸

Note that this refers to uses of land (premises) and of buildings and that the use must have been existing before the new ordinance or amendment.

☐ **Counties:** "*[T]he continuance of the lawful use of any building or premises for any trade or industry for which such building or premises is used at the time [zoning] ordinances take effect.*"¹³⁹

Note that the protection granted by county law is to "trade or industry." Surprisingly, no court case has reached the Wisconsin Supreme Court on the question of whether uses other than "trade or industry" have statutory rights not to be prohibited. In practice, most county ordinances give equal treatment to all preexisting situations, regardless of the category of land use in question.

An early Attorney General's Opinion suggested that agricultural uses could be halted because they were not trade or industry where such a halt was justified in careful investigations of conditions.¹⁴⁰ Courts have held that the statutes protect only the precise use that predated the code and other very similar uses.¹⁴¹

☐ **Towns:** "*[T]he continued use of any building or premises for any trade or industry for which the building or premise is used when the ordinance takes effect.*"¹⁴²

[See comments above for counties.]

4.4.1.2. *Nonconforming Structure*

A nonconforming structure is fairly common. It involves a building or other structure, lawfully existing at the time of the passage of a zoning ordinance, that does not comply with the *dimensional* requirements of the new ordinance for such things as lot coverage, height, or yard requirements applicable to new structures within the same zoning district.

Guide to Community Planning In Wisconsin

4.4.1.3. Nonconforming Lot

Nonconforming lots involve a legally recorded lot that existed at the time of the passage of a zoning ordinance but fails to meet square footage or other spatial requirements for the zoning district within which it is located.

4.4.2 Statutory Protection of Nonconforming Uses From Local Zoning Regulations.

The statutes prohibit local zoning ordinances from eliminating certain nonconforming uses. These prohibitions are explored below:

☐ **City and villages:** *“The lawful use of a building or premises existing at the time of the adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance.”*¹⁴³

☐ **Counties:** *“[A zoning ordinance] shall not prohibit the continuance of the lawful use of any building or premises for any trade or industry for which such building or premises is used at the time such ordinances take effect.”*¹⁴⁴ The statute is silent about uses other than a “trade or industry”?

The county zoning enabling statute also provides that the continuance of the nonconforming use of a temporary structure may be prohibited.¹⁴⁵ However, court cases hold that to continue a nonconforming use is to engage in the use actively and constantly, as the principal use of the building or land, such that the owner continually exhibits a serious vested interest in its perpetuation.¹⁴⁶ This is not at odds with the allowance in county law of a forced halt in use of a temporary structure.

☐ **Towns:** *“[A zoning ordinance] may not prohibit the continued use of any building or premises for any trade or industry for which the building or premises is used when the ordinance takes effect.”*¹⁴⁷

4.4.3 Statutory Limitation on Extensions, Expansions, or Alterations.

While the statutes allow certain nonconforming uses to continue, the statutes place limits on the ability of a property owner to expand, alter, and reconstruct nonconforming uses. These statutory sections are highlighted below.

☐ **Cities and villages:** *“Such*

*nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 percent of the assessed value of the building unless permanently changed to a conforming use.”*¹⁴⁸

☐ **Counties:** *“[T]he alteration of, or addition to, or repair in excess of 50 percent of its assessed value of any existing building or structure for the purpose of carrying on any prohibited trade or new industry within the district where such buildings or structures are located, may be prohibited.”*¹⁴⁹

The Wisconsin Supreme Court has stated that uses not conforming to a county ordinance may not be extended.¹⁵⁰ Note that the city/village law grants statutory protection to the property owner to repair or alter structures within the 50 percent rule and fails to allow the local ordinance to permit alterations and repairs in excess of 50 percent. The county statute on the other hand requires that limits be put in an ordinance, making such limit subject to local option. Again the phrase “trade or industry” is used. Presumably, a county can ban all alterations, additions, or repairs to a nonconforming residential structure. Presumably also, a county can allow or deregulate expansions, alterations or reconstructions of nonconforming structures.

☐ **Towns:** *“[A zoning ordinance] may prohibit the alteration of, or addition to, any existing building or structure used to carry on an otherwise prohibited trade or industry within the district.”*¹⁵¹

Note that the statutory language for counties and towns addresses structures, whereas the language for cities and villages addresses uses.

The 50 percent rule has led to numerous practical difficulties in its application. One issue relates to what is meant by “structural repairs.” Often local communities may include a definition of “structural repairs” in their zoning ordinances. This means that nonconforming use issues need to be resolved within the context of the exact wording of the local ordinance. In one case, the Wisconsin Supreme Court held that “structural repairs” includes “work that would convert an existing building into a new or substantially different building, . . . work that would affect the structural quality of the building [and] work that would contribute to the longevity or permanence

Guide to Community Planning In Wisconsin

of the building.¹⁵² The Court went on to say that structural repairs **did not** include efforts to modernize structures (such as adding acoustical tiles and installing heating, electricity, plumbing or insulation) and those repairs necessary to prevent deterioration of the structure.¹⁵³

Another issue concerns the problems associated with the statutes' use of the term "assessed value." Assessed value may not always be an accurate measure of fair market value. Different values will affect the amount of repairs that can be done to a structure.¹⁵⁴

Enlargements or extensions of a nonconforming use cannot change the use of the property.¹⁵⁵ However, the mere increase in the volume, intensity or frequency of a nonconforming use is not sufficient to prove an impermissible expansion of a nonconforming use.¹⁵⁶ For example, an increase in business activity for a business that is a valid nonconforming use is not prohibited.¹⁵⁷ Rather, proof of structural alterations or repairs in violation of any statute or ordinance are required to prove the impermissible expansion of a nonconforming use.¹⁵⁸

The penalty for illegally expanding a nonconforming use is severe. An illegal expansion or enlargement of a nonconforming use invalidates the legal nonconforming use as well as the illegal change.¹⁵⁹

4.4.4 Discontinuance of Nonconforming Uses.

The zoning enabling statutes for cities and villages (and towns with village powers), counties, and towns all provide that if a nonconforming use is discontinued for a period of 12 months, any future use of the building and premises must conform to the zoning ordinance.¹⁶⁰

Legal nonconforming uses run with the land and not the owner. Sale of a nonconforming use does not result in discontinuance of the nonconforming use.

4.4.5 A Summary of Nonconforming Use Basics

The property owner has the burden to prove by a preponderance of the evidence the nonconforming use status.¹⁶¹

The nonconforming use must have been

in existence at the time the ordinance that now prohibits that use was passed.¹⁶²

The use must be lawful. It must not contravene prior zoning or other ordinances.¹⁶³

The use must be the same or a "related use" as existed when the ordinance came into effect.¹⁶⁴

The use must have been active and actual and not occasional or sporadic so that the property owner acquired a "vested interest" in its continuance.¹⁶⁵

The use must be more than merely accessory or incidental to the principal use,¹⁶⁶ although the nonconforming use need not have been the most substantial use.¹⁶⁷

4.4.6 Approaches to Nonconformities

Communities need to develop a practical approach to nonconforming uses. Such an approach recognizes the importance of a having conducted a planning process that allows a community to explore alternatives and establish a policy context for addressing issues related to nonconforming uses. How aggressively does the community want to phase out nonconforming uses recognizing that they involve a small part of the community, and that enforcement efforts are spent more productively guiding new development? How much limited expansion should occur? It may be necessary, however, to tightly regulate nonconforming uses so that they do not stand out as visible symbols of leniency to which people point as precedents when seeking permission for new development plans that resemble those having "grandfather" status. The planning process can help define the neighborhood character that should be maintained in a specific area of the community over a substantial period of time to provide a context for drafting zoning regulations and understanding nonconforming uses.

When adopting or amending a zoning ordinance, the number and type of nonconforming uses that exist or are likely to be created should be identified. The existing or proposed regulations for nonconforming uses should be studied in light of this information to determine the net effect of any action. The nonconforming zoning

Guide to Community Planning In Wisconsin

regulations should be strong enough to eliminate those nonconformities that threaten the health, safety, and general welfare of the community, and yet at the same time, be flexible enough to be enforceable over a broad range of circumstances.

When drafting zoning ordinances, the community should also pursue efforts not to create nonconforming uses in the first place. For example, it can create a special "mixed use district," that if that is consistent with the objectives of the community's plans, rather than exclusive use districts.

Local zoning ordinances should also classify nonconformities according to nonconforming *lots*, nonconforming *structures*, and nonconforming *uses*. This classification of nonconformities allows the varying problems associated with each to be treated differently.¹⁶⁸ Those nonconformities that present the most serious problems to the community can be identified, and enforceable regulations can be enacted.

If a community wants to eliminate troublesome nonconforming uses, it can also explore applying other techniques. For example, a community may need to eliminate a nonconforming use by using the power of eminent domain to buy the property.

The community may also bring a nuisance action.¹⁶⁹ Long before the concept of zoning, courts upheld regulations requiring the immediate discontinuance of uses and structures that had adverse affects upon public health, safety, or morals as a nuisance. Zoning did not replace nuisance law. Nuisance law still provides a viable alternative for dealing with unwanted land uses such as junk yards, automobile wrecking yards, billboards, etc., that often are the least susceptible to the discontinuance and 50 percent rules of the nonconforming use statutes.¹⁷⁰

In addition, while preexisting nonconforming uses are protected from zoning ordinances, they are generally not granted immunity from ordinances enacted under other statutory provisions¹⁷¹ and police power regulations governing the manner or operation of use. For example, a quarry may have the protected status of a nonconforming use but it can

still be subject to licensing or special permit requirements. According to one court, "[n]either the defendants' original nonconforming use, nor their expansion of it, excuses them from the licensing ordinance. A regulatory ordinance is not encumbered by a nonconforming use provision."¹⁷²

Finally, another technique often considered for application to nonconforming uses is to mandate a phasing out of such uses after varying periods of time, depending on the use and capital investment involved (commonly called amortization). The regulations provide that the time period begins to run on adoption of the ordinance, and require that the use terminate on or before the expiration of the time period. This allows the owner to regain a portion of his or her investment over a period of time. While this technique is more prevalent in other states than in Wisconsin, the amortization concept has been used in some limited situations in Wisconsin.¹⁷³

4.5 Enforcing the Code

Throughout zoning there are devices by which codes can be adjusted or amended to fit peculiar circumstances and by which general rules can be made specific to fit the characteristics of particular properties. This does not mean, however, that zoning always will be varied or amended to satisfy every wish of every property owner. At some point, the variations end. In some situations, landowners' wishes are thwarted by the code. If the code is to have meaning, there has to be another set of administrative activities that ensure landowner compliance.

Zoning ordinances may be enforced in a number of ways. The methods used for enforcement should be specified in the community's zoning ordinance. One way to enforce the ordinance is to refuse to issue building or occupancy permits where the use of land fails to comply with the ordinance.¹⁷⁴ Other measures should be based on a course of progressive enforcement that ultimately could result in a court action to recover forfeitures or by seeking an injunction to force compliance with the zoning ordinance.¹⁷⁵

Guide to Community Planning In Wisconsin

Often enforcement issues can be resolved short of burdening the court system with lawsuits. The sequence of enforcement activities which should occur include the following:

Surveillance. People engaged in code administration observe land uses and developments and compare occurrences with the rules of the code. Surveillance can be systematic and deliberate: officials can regularly survey the community for violations. More commonly, surveillance is not systematic. Violations are checked only on complaint or by accidental discovery.

Notification of the property owner. The initial notice to the property owner is usually in the form of an informal communication in which the owner is told that the condition is under observation and advised that unless the offending problem is cured, formal enforcement action may be started.

Follow-up observation. The enforcement officials will then recheck the condition. If the violation persists, the property is likely to be "tagged." In tagging the property, the zoning inspector declares a conclusion that the violation exists, demands a remedy or a halt, and states an intent to pursue a court proceeding, either immediately or at expiration of a stated deadline.

Start of court proceedings. Zoning violations can subject the violator to monetary forfeitures and/or to court-ordered injunction. These remedies come about in the course of a court proceeding started by or with the consent of the attorney for the community. Typically, the code administrator turns over the enforcement file on a violation to the attorney, who then has the necessary papers served to commence a civil enforcement suit. The enforcement suit then proceeds in the court with the government producing proof of violation and demanding relief on that basis, and the defending party offering counter-evidence, defenses, etc.

The end result of a suit can be a court judgment of ordinance violation, a court judgment of dismissal, or an out-of-court settlement. If the outcome includes injunctive relief, the zoning officials will have some responsibility to enforce

the court order or at least to monitor compliance with it similar to monitoring compliance with the ordinance itself.¹⁷⁶ In unique circumstances, the court has the authority to modify the injunctive relief sought by a local community to provide a fair and equitable remedy for a zoning ordinance violation.¹⁷⁷

4.5.1 Citizen Enforcement Actions

A neighboring property owner or other aggrieved person can also initiate proceedings to enforce a zoning ordinance. The granting of a zoning permit is an appealable decision made in the enforcement of the ordinance.¹⁷⁸ Any person aggrieved by a decision made by an administrative official can appeal that decision to the board of appeals or board of adjustment.¹⁷⁹ Any person aggrieved by a decision of the board of appeals or board of adjustment, or any taxpayer in the community, may also seek judicial review of the decision.¹⁸⁰ In addition, any person specially damaged by a violation can also seek to enforce a zoning ordinance by initiating an action in the courts for injunctive relief.¹⁸¹

Guide to Community Planning In Wisconsin

5. Resource Materials

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Guide to Community Planning In Wisconsin

6. Endnotes

1. *State v. Harper*, 182 Wis. 148, 153, 196 N.W. 451, 452 (1923).
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3. Kunstler, James Howard. **The Geography of Nowhere** (Simon and Schuster, 1993).
4. Green, Richard K. 1997. *Land Use Regulation and the Price of Housing in a Suburban Wisconsin County*, a White Paper commissioned by the Wisconsin Realtors Association and the Wisconsin Builders Association.
5. *Quinn v. Town of Dodgeville*, 122 Wis. 2d 570, 364 N.W.2d 149 (1985).
6. For example, see the Opinion of the Attorney General, from March 31, 1987, discussion the ability of towns to adopt building codes which regulate the placement of driveways despite the fact the towns are under county zoning authority. Op. Atty. Gen. 15-87.
7. Wis. Stat. § 59.69(4).
8. Wis. Stat. § 59.692.
9. Wis. Stat. § 87.30.
10. See Wis. Stat. § 114.136 for airport approach protection zoning and Wis. Stat. §§ 91.71-79 for exclusive agricultural zoning.
11. Wis. Stat. §§ 60.61(2) - 60.61(6).
12. Wis. Stat. § 60.62.
13. Where a county has adopted a county-wide zoning ordinance, a town granted village powers may not exercise zoning authority until it has first received approval by referendum of the electors of the town. The ordinance itself is not subject to approval by referendum. Op. Atty. Gen. Nov. 30, 1976.
14. A town board exercising zoning under village powers is not required to petition the county board prior to adopting a town zoning ordinance. The town zoning ordinance, however, will not become effective and cannot be enforced until the county approves the town zoning ordinance. Op. Atty. Gen., July 16, 1973. See also *Stahl v. Town of Spider Lake*, 149 Wis. 2d 230, 441 N.W.2d 250 (Ct. App. 1989).
15. Wis. Stat. § 114.136.
16. Wis. Stat. § 62.23(7).
17. Wis. Stat. § 62.23(7)(a).
18. Wis. Stat. § 62.23(7a).
19. Wis. Stat. § 87.30.
20. Wis. Stat. § 114.136.
21. Wis. Stat. § 66.021(7).
22. Wis. Stat. § 59.69(7).
23. *Id.*
24. Wis. Stat. § 59.692(7)(a).
25. Wis. Stat. § 59.693(10).

Guide to Community Planning In Wisconsin

26. State law uses the name “board of adjustment” in dealing with county and town zoning and the name “board of appeals” when dealing with cities and villages. Each board has some functions which are better described by the term “appeals” and others characterized by the term “adjustment.” For this reason, this guide uses the combined title.
27. The composition of the board of adjustment is spelled out in Wis. Stat. §§ 59.694 (counties) and 62.23(7)(e)2 (cities, villages, and towns with village powers), but composition should nevertheless be discussed in the ordinance for ready reference.
28. The statutes provide specifically for judicial review (under what is called “certiorari”) of board of appeals/adjustment decisions. Wis. Stat. §§ 59.694(10) and 62.23(7)(e)(10). Board decisions are exempt from administrative appeal under Wis. Stat. Ch. 68. Board decisions are generally not appealable to the local legislative body.
29. The statutes on special exception/conditional use procedures provide that the authorization of the use of such devices in local ordinances and assignment by local ordinance of the power to hear and decide such matters to the board of appeals/adjustment, the plan commission, or the local governing body. If the assignment is made to the board of appeals/adjustment, a hearing shall be provided and the decision on the matter shall be made by a majority vote on the board. The proper handling of special exception/conditional use applications requires considerably more in the way of prescribed procedure than the small amount listed by the state law. Local ordinances must fill the voids.
30. Wis. Stat. § 59.69(5)(a).
31. Wis. Stat. § 62.23(7)(d)1.
32. Wis. Stat. § 60.61(4)(b).
33. State statutes for cities, villages, and towns exercising village powers, provides that either the plan commission or the governing body must hold the hearing at the option of the governing body. Wis. Stat. § 62.23(7)(d)1.a.
34. Wis. Stat. § 59.69(5)(a) (counties) and Wis. Stat. § 62.23(7)(d)1.a. (cities, villages, and towns exercising village powers). A class 2 notice requires publication of the notice in the community’s official newspaper two times--once during each of the two weeks prior to the hearing.
35. Wis. Stat. § 60.61(4)(b). A 1950 Attorney General’s Opinion, 39-292, discusses the required hearing.
36. Written notice must be sent to clerks of all municipalities the boundaries of which are within 1,000 feet of any lands included in the proposed zoning. Failure to give this notice does not invalidate the zoning. Wis. Stat. § 62.23(7)(d)1.a.
37. A proper and workable label for the material being reported out or recommended to the local governing body under the last two options is a “recommended draft.” The report to the governing board should include enacting language, proof of publication of the notice of the hearing, etc.
38. Wis. Stat. § 60.61(4)(b).
39. Wis. Stat. § 60.61(4)(b).
40. The governing body may hold a voluntary public hearing. Wis. Stat. § 59.69(6) specifically authorizes as optional a hearing before a county board, but states a legislative finding that such a hearing is over and above minimal due process requirements.
41. The county zoning statute states that the county board, having before it a proposed zoning ordinance and report of the plan commission which recommends its passage, “may adopt the ordinance as submitted, or reject it, or return it to the [plan commission] with such recommendations as the county board may see fit to make. In the event of such return subsequent procedure by the [commission] were acting under original directions.” Wis. Stat. §59.69(5)(b). There are no “original directions” to which the statute can refer except the original procedures in general (that is, the hearing before the plan commission and report to the governing body). A reasonable

Guide to Community Planning In Wisconsin

interpretation of this provision read in light of the statutory material that surrounds it (see Wis. Stat. §59.69(5)(e)(5)) is that the county board must send back to the plan commission the main ordinance and any amendments offered on the floor of the county board, and the plan commission must hold a hearing on the proposed ordinance with proposed amendments and must report the package back to the board with the commission's recommendations. If the amendments offered on the county board floor are not phrased in proper language so as to fit within the drafted ordinance, the commission should have the correct legal language prepared and submitted as part of its report. There is no indication what is to occur in the event the county board receives more amendment motions during its second look at the ordinance. It is probably acceptable for the board to accept and vote on new amendments subsequent to the one round of re-referral.

The zoning statute for cities, villages, and towns exercising village powers, states: "The council may make changes in the tentative recommendations after first submitting the proposed changes to the plan commission . . . for recommendation and report . . ." Wis. Stat. § 62.23(7)(d)1.b.

42. Wis. Stat. § 60.61(4)(b).

43. Wis. Stat. § 59.69(5)(b).

44. Wis. Stat. § 59.14 and Wis. Stat. § 66.035. The mailing of a copy of the ordinance to town clerks under Wis. Stat. § 59.14 probably is adequate for county shoreland and floodplain zoning ordinances that do not require the town consideration, approval contemplated in Wis. Stat. § 59.69(5)(b).

45. Wis. Stat. § 59.69(5)(c).

46. The decision must be made by the town board; it cannot be made by the electors at the town meeting or by referendum, although such expressions of voter opinion can occur on an advisory basis to the town board. Op. Atty. Gen. 62-292 (1973).

47. If a town board chooses not to have a new county ordinance go into effect, it need not vote disapproval. The ordinance goes into effect only if approval is voted. This contrasts with the town veto arrangement on amendments to a county ordinance.

48. If the county ordinance which the county board adopted includes both text and map, the approving resolution passed by the town board must specifically approve both text and map. *Racine County v. Alby*, 65 Wis.2d 574, 223 N.W.2d 438 (1974).

49. The town board cannot approve only parts of the county ordinance. The ordinance is approved in total or not at all. Op. Atty. Gen. 63-200 (1974).

50. Town board approvals once adopted may not be rescinded or otherwise reversed at a later date. Op. Atty. Gen. 53-78 (1978).

51. Wis. Stat. § 60.80 provides for publication of ordinances adopted by the town board as a class 1 notice under Wis. Stat. ch. 985 or posting of copies in three of the most public places in the town. Wis. Stat. § 66.035 also applies to towns.

52. Wis. Stat. § 61.50 and Wis. Stat. § 66.035.

53. Wis. Stat. § 66.035.

54. Wis. Stat. § 60.62(3). A county board's decision concerning approval or disapproval of a town zoning ordinance can only be challenged in cases of abuse of discretion, excess of power, or error of law. 79 Op. Atty. Gen. 117 (1990).

55. Wis. Stat. § 62.23(7a).

56. In *Town of Grand Chute v. City of Appleton*, 91 Wis. 2d 293, 282 N.W.2d 629 (Ct. App. 1979), the court held that the interim ordinance may freeze existing zoning, if there is zoning, or may freeze existing uses. However, the statute does not allow a city to freeze the more restrictive of zoning or uses. The city therefore could not freeze land

Guide to Community Planning In Wisconsin

- uses to the existing uses where the property was vacant but zoned commercial.
57. See *Walworth County v. City of Elkhorn*, 27 Wis.2d 30, 133 N.W.2d 257 (1965) (a two year moratorium authorized by this statute was held to be valid).
 58. See *Tesker v. Town of Saukville*, 208 Wis.2d 600, 561 N.W.2d 338 (Ct. App. 1997), as an example of a local community's zoning ordinance which provided that on proposed zoning changes, the plan commission's recommendation could only be overruled by the unanimous vote of the full town board's membership.
 59. A 1954 opinion by the Attorney General, 43-73, stated that the county board in amending an ordinance must comply with the amendment procedures set out in the statutes and may not establish different methods. The County Board of Vilas County had proposed to require that all petitions for amendments be decided at one meeting per year of the County Board. The underlying idea was to consolidate public hearings on proposed amendments instead of having hearings at numerous times throughout the year. Applicants who wanted to avoid waiting until the consolidated decision date would be allowed to have a hearing and decision out of sequence by paying the full costs of the hearing. The Attorney General found the proposal to be beyond the specified statutory procedures and, therefore, not legal.
 60. A "petition for amendment" can be a formal legal document, phrased as a petition, identifying the section(s) of the ordinance that are petitioned to be altered and proposing specific amendatory language, precisely identifying affected properties, and identifying the petitioner(s) in a way that establishes their eligibility to petition. On the other hand, submission of a simple letter in which a request is made for an amendment to the ordinance is probably sufficient if the changes desired by the requester are reasonably clear and if the letter gives enough information to allow the county to determine eligibility of the petitioner to initiate a change, should this become an issue. Similarly, a motion to amend offered by a member of the county board probably also substitutes for a petition.
 61. Wis. Stat. § 59.69(5)(e)1.
 62. Wis. Stat. § 59.69(5)(e)2.
 63. Wis. Stat. § 59.69(5)(e)5g.
 64. There are no statutory rules about the hearing. It is believed that hearings on proposed zoning amendments are not quasi-judicial in character and thus do not require the formality of such a proceeding. It is good practice to inform the attending public that the role of the plan commission is to advise the county board and that the board will make the ultimate decision. On any zoning amendment matter where there is a prospect of town veto resolutions submitted after the hearing it is wise for the county plan unit not to take a vote on the matter at the same session as the hearing.
 65. The law contemplates that the amendment proposal can be altered as it makes it way through the process and defines no point at which such change becomes so major as to warrant recycling back through the notice and hearing stage. On the other hand, nothing in the law prevents the plan commission from calling a second hearing on the proposed "amended amendment," or for arranging for a significantly different proposal to be introduced as a new petition and receiving a new hearing through normal procedures.
 66. Wis. Stat. § 59.69(5)(e)4.
 67. Wis. Stat. § 59.69(5)(e)4.
 68. Wis. Stat. § 59.69(5)(e)3.
 69. Wis. Stat. § 59.69(9)(a). This does not apply to land that is subject to a town zoning ordinance which is purchased by the county for use as a solid or hazardous waste disposal facility. Wis. Stat. § 59.69(9)(b)
 70. The wording of the statute assumes that a map amendment will fall entirely within one town. A zoning district spanning a town line would be subject to veto power by each town as to that part of the district in each town. Each town would, of course, receive notice.

Guide to Community Planning In Wisconsin

71. Determining the “affected towns” is sometimes troublesome. Usually all towns within the county ordinance are assumed to be affected by most general text amendments. A 1964 Attorney General's opinion holds that when an amendment changes the text of a zoning district, only towns having lands in that district are affected. 53 Op. Atty. Gen. 214 (1964). Each town resolution counts as one regardless of the population of the town.
- Text amendments to alter county agricultural zoning districts are subject to town veto on a town by town basis under the Wisconsin Farmland Preservation Act. Wis. Stat. § 91.73(4).
72. Wis. Stat. § 59.69(5)(e)3m.
73. The town veto must be done by resolution at a town board meeting by a vote. It need not have a public hearing at the town level. *Jefferson County v. Timmel*, 261 Wis. 39, 51 N.W.2d 518 (1952). The town board is legally presumed to make its decisions on veto matters in accord with the purposes and intent of the county zoning law.
74. The powers of a town board to kill a proposed county zoning amendment affecting the town are not paralleled by a power to *force* the county to pass an amendment desired by the town board.
75. Wis. Stat. § 69.59(5)(e)5g.
76. The statutes are not clear whether this means 24 hours before the hour which the county board meeting is to commence or 24 hours before the start of the day (12:00 a.m.) in which the board session is to occur. Another issue is whether a protest petition could be entertained if received 24 hours before a second or third county board session at which the rezone amendment matter was to be considered. Assume the plan commission report is put on the agenda of a March county board session. The board adjourns before dealing with the report. The matter appears on the April agenda. In April the board discusses the matter and lays it over until May. Can a protest petition be received for the first time before the May meeting?
77. Passage by the board in ignorance of the existence of a submitted protest which was not transmitted to the legislative body is invalid. *Holzhauser v. Ritter*, 184 Wis. 35, 198 N.W. 852 (1924).
78. Wis. Stat. § 59.69(5)(e)5. The commission's duties in such an event seem clearly to be to draft an ordinance. The referral for this purpose does not trigger a hearing nor the publication of any special notice pertaining to the commission's work nor a need for the commission to take a policy position on the question.
79. The board's rules and customs may address a variety of questions that arise in board consideration of zoning amendments. These include: how motions are made to put the report and ordinance before the body; dealing with conflicts of interest; roll call versus voice votes (note that a vote on a rezone that has drawn a protest petition must be by roll call so that the 3/4 margin can be evidenced), and various parliamentary questions.
80. The board can postpone by tabling, referral to a future meeting, postponement to a definite time or indefinite postponement, or by referring the matter to another committee.
81. Although not mentioned in the statutes, the county board could probably set a different effective date. See *Konkel v. Delafield*, 68 Wis.2d 514, 229 N.W.2d 606 (1975).
82. The county board, clerk, and executive will have devised the mechanics of this, since the veto procedure applies to all resolutions and ordinances passed by the county board. Wis. Stat. § 59.17(6). For a recent case upholding the county executive's veto power as an appropriate part of the local legislative process, see *Schmeling v. Phelps*, 212 Wis. 2d 898, 569 N.W.2d 784 (Ct. App. 1997).
83. The Executive has until the next board meeting that is no less than 6 days removed from the time he or she was presented the passed ordinance, provided that if the board recesses or adjourns for more than 60 days after passing the ordinance, the executive has no time limit. The ordinance cannot go into effect without positive approval of the Executive. Wis. Stat. § 59.17(6). The requirement for action by the county executive is based on Article IV, section 23a of the Wisconsin Constitution.
84. *Schmeling v. Phelps*, 212 Wis. 2d 898, 569 N.W.2d 784 (Ct. App. 1997). The timeframe may also be subject to further delay of the effective date for town veto consideration.

Guide to Community Planning In Wisconsin

85. Wis. Stat. § 60.61(c).
86. Wis. Stat. § 60.61(c)2. If a protest is received, the amendment requires a three-fourths vote of the town board to pass.
87. Wis. Stat. § 62.23(7)(d)2.
88. Several notices are required on the proposal and hearings: a. A class 2 notice to the public is required to be published on the amendment and; b. The clerk of any municipality which has boundaries within 1,000 feet of land to be affected by the proposed amendment must be sent written notice at least 10 days before the hearing. However, failure to give this notice does not invalidate the proceedings. Wis. Stat. § 62.23(7)(d)1 a. While not required by the statutes, many communities require in their ordinances that written notices to be sent to all property owners directly affected by the amendment proposal and to all property owners within the protest petition area in an effort to promote good government relations. Notice is also often sent to a variety of affected or interested persons or agencies. Intergovernmental relationships will be enhanced if notice is given to nearby towns, cities and villages.
89. The council can direct that the hearing be held by the council itself or by a plan committee of the council or the board of public land commissioners. Wis. Stat. § 62.23(7)(d)2.
90. "If the (city) council does not receive recommendations and a report from the plan commission, board of public land commissioners or plan committee within 60 days of submitting the proposed amendments, the council may hold hearings without first receiving the recommendations and report." Wis. Stat. § 62.23(7)(d)2.

The ordinance should outline what the report of the commission should include, such as whether the commission is to draft or cause to have drafted the appropriate ordinance terms so that the council will have before it the amendment in a form that can be acted upon. The ordinance should also address whether the commission should recycle through the hearing process if the commission reports out an amendment in a significantly amended form. The general law on this question is that a substantial change in an amendment proposal can require a recycling if the original notice was not broad enough to indicate that such change might be made and if the possibility of such alterations was not discussed openly at the hearing where persons interested in the amendment and its alternatives were able to learn of the possibility and comment upon it.

91. City and village law on protest petitions requires a "duly signed and acknowledged" protest petition signed by the owners of 20% or more of the area included in the proposed amendment; or by the owners of 20% or more of the area immediately adjacent and extending 100 feet therefrom; or by owners of 20% or more of the land directly opposite and extending 100 feet from the street frontage of such opposite land. Wis. Stat. § 62.23(7)(d)2m. The statutes are silent on the method and timing of the protest petition, but it is unlikely that a city or village could dismiss an otherwise valid protest petition that was submitted to the council or village board at any time before the legislative body was to vote on the amendment.
92. Wis. Stat. § 60.62(3).
93. Referral of city zoning amendments to the mayor is governed by Wis. Stat. § 62.09(8)(c) which provides the mayor with veto power over the acts of the council.
94. Wis. Stat. § 62.11(4)(a), requires newspaper publication of all adopted city ordinances within 15 days of passage. Ordinances take effect on the day after publication, or later if the ordinance so states. Wis. Stat. § 61.50(1) provides similar procedures for villages. Wis. Stat. § 66.035 provides for the alternative use of a code of ordinances. The case *City of Lake Geneva v. Smuda*, 75 Wis.2d 532, 249 N.W.2d 783 (1977), holds that zoning district maps need not be published because of the practical difficulty of doing so. See also Wis. Stat. § 889.04 on proof of municipal ordinances in court proceedings.
95. *Cushman v. City of Racine*, 39 Wis.2d 303, 159 N.W.2d 67 (1968).
96. *Howard v. Village of Elm Grove*, 80 Wis.2d 33, 257 N.W.2d 850 (1977).
97. *Cushman v. City of Racine*, 39 Wis.2d 303, 309, 159 N.W.2d 67, 70-71 (1968).

Guide to Community Planning In Wisconsin

98. *Bell v. City of Elkhorn*, 122 Wis. 2d 558, 568, 364 N.W.2d 144, 148 (1985).
99. *Bubolz v. Dane County*, 159 Wis. 2d 284, 464 N.W.2d 67 (Ct. App. 1990).
100. *State ex rel. Zupancic v. Schimenz*, 46 Wis.2d 22, 174 N.W.2d 533 (1970).
101. *Konkel v. Delafield*, 68 Wis.2d 574, 229 N.W.2d 606 (1975).
102. *Konkel v. Delafield*, 68 Wis.2d 574, 229 N.W.2d 606 (1975).
103. *Howard v. Village of Elm Grove*, 80 Wis.2d 33, 257 N.W.2d 850 (1977).
104. Wis. Stat. § 62.23(7)(d)3.
105. Wis. Stat. § 62.23(7)(d)3.
106. Wis. Stat. § 60.61(4)(d)2.
107. Wis. Stat. § 60.61(4)(d)1.
108. Wis. Stat. § 59.69(5)(d).
109. *Racine County v. Alby*, 65 Wis.2d 574, 223 N.W.2d 438 (1974).
110. 1 Op. Atty. Gen. 94, January 6, 1994.
111. The zoning law for counties does not provide any guidance for the creation of PUDs, other than providing that counties have the authority to “designate certain areas, uses or purposes which may be subject to special regulations.” Wis. Stat. § 59.69(4)(e). Another part of the county zoning statutes uses the term, “planned unit developments.” Wis. Stat. § 59.69(2)(bm).
112. Wis. Stats. § 62.23(7)(b).
113. *City of Waukesha v. Town of Waukesha*, 198 Wis.2d 592, 543 N.W.2d 515, review denied 201 Wis.2d 436, 549 N.W.2d 732 (Ct. App. 1995). According to the court, “An ordinance allowing a local plan commission to authorize a PUD as a conditional use must specify particular areas for the placement of any proposed PUD....”
114. *Id.*
115. Non-written interpretive decisions are treated by the courts as giving the applicant no protection against prosecution if the property use turns out to violate the code. *Snyder v. Waukesha County Zoning Board of Adjustment*, 74 Wis.2d 468, 247 N.W.2d 98 (1976).
116. Wis. Stat. § 59.694(7)(a) and Wis. Stat. § 62.23(7)(e)7 allow administrative appeals to the board of adjustment/appeals when there is an alleged error in an order, requirement, decision or determination made by an administrative official in the enforcement of the zoning statutes or local zoning ordinance. A community should require that a permit application be submitted and acted upon before an appeal is entertained. This puts a written record before the appeals body. The requirement can be imposed by local ordinance or by rules of the board of adjustment/appeals.
117. *State ex rel. Skelly Oil Co. v. Common Council*, 58 Wis.2d 695, 701, 207 N.W.2d 585, 587 (1973).
118. *State ex rel. Skelly Oil Co. v. Common Council*, 58 Wis. 2d 695, 700, 207 N.W.2d 585, 587 (1973). *Delta Biological Resources v. Board of Zoning Appeals*, 180 Wis. 2d 905, 467 N.W.2d 164 (Ct. App. 1991). Under the 1920s Standard State Zoning Enabling Act, upon which Wisconsin’s laws are based, the term “special exception” actually meant an adjustment to the zoning ordinance in exceptional circumstances. It did not provide for placing conditions on certain uses.
119. Special exceptions may be granted by board of adjustment/appeals, county or town zoning agencies, county or town boards, city plan commissions or city councils, depending on what the local zoning ordinance says about which body has the responsibility.

Guide to Community Planning In Wisconsin

120. *Kraemer v. Sauk County Board of Adjustment*, 183 Wis. 2d 1, 515 N.W.2d 256 (1994); *Delta Biological Resources, Inc. v. Board of Zoning Appeals*, 160 Wis. 2d 905, 912, 467 N.W.2d 164 (Ct. App. 1991).
121. *Weber v. Town of Saukville*, 209 Wis. 2d 214, 562 N.W.2d 412 (1997).
122. *Kraemer v. Sauk County Board of Adjustment*, 183 Wis. 2d 1, 515 N.W.2d 256 (1994); *Smith v. Brookfield*, 272 Wis. 1, 74 N.W.2d 770 (1956).
123. *Arndorfer v. Sauk County Board of Adjustment*, 162 Wis.2d 246, 469 N.W.2d 831 (1991).
124. *State ex rel. Skelly Oil Co. v. Common Council*, 58 Wis.2d 695, 701, 207 N.W.2d 585, 587 (1973).
125. *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998) citing 3 Rathkopf, **The Law of Zoning and Planning** §37.06 at 37-81 (3d ed. 1972).
126. Wis. Stat. § 62.23 (7)(e)7.
127. *Snyder v. Waukesha County Zoning Board of Adjustment*, 74 Wis.2d 468, 474, 247 N.W.2d 98 (1977). Here the court was citing language from an earlier Wisconsin decision, *State ex rel Markdale Corp. v. Board of Appeals*, 27 Wis.2d 154, 133 N.W.2d 795 (1965). See also *State v. Winnebago County*, 196 Wis.2d 836, 540 N.W.2d 6 (Ct. App. 1995).
128. *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998).
129. *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998).
130. *Snyder v. Waukesha County Zoning Board of Adjustment*, 74 Wis.2d 468, 475, 247 N.W.2d 98 (1976). Here the court used the language of 2 Rathkopf, **The Law of Zoning and Planning**, 45-28 (3d ed. 1972).
131. *Snyder v. Waukesha County Zoning Board of Adjustment*, 74 Wis.2d 468, 247 N.W.2d 98 (1977); *Arndorfer v. Sauk County Board of Adjustment*, 162 Wis.2d 246, 469 N.W.2d 831 (1991).
132. *Goldberg v. City of Milwaukee Board of Zoning Appeals*, 115 Wis. 2d 517, 523, 340 N.W.2d 558 (Ct. App. 1983).
133. *Snyder v. Waukesha County Zoning Board of Adjustment*, 74 Wis.2d 468, 476, 247 N.W.2d 98 (1976).
134. *State v. Winnebago County*, 196 Wis.2d 836, 540 N.W.2d 6 (Ct. App. 1995).
135. *Arndorfer v. Sauk County Board of Adjustment*, 162 Wis.2d 246, 469 N.W.2d 831 (1991).
136. *Tateoka v. City of Waukesha Board of Zoning Appeals*, 220 Wis.2d 656, 583 N.W.2d 871 (Ct. App. 1998).
137. *Village of Menomonee Falls v. Veierstahler*, 183 Wis.2d 96, 98, 515 N.W.2d 290, 292 (Ct. App. 1994)
138. Wis. Stat. § 62.23(7)(h).
139. Wis. Stat. § 59.69(10)(a).
140. Op. Atty. Gen. 20-751 (1931).
141. *State ex rel. Brill v. Mortenson*, 6 Wis.2d 325, 96 N.W.2d 603 (1959).
142. Wis. Stat. § 60.61(5).
143. Wis. Stat. § 62.23(7)(h). "Premises" is ordinarily defined to include land and structures attached to the land. Friedman, Jack P., Jack C. Harris, and J. Bruce Lindeman, **Dictionary of Real Estate Terms** (1987).
144. Wis. Stat. § 59.69(10)(a).
145. Wis. Stat. § 59.69(10)(a).

Guide to Community Planning In Wisconsin

146. *Walworth County v. Hartwell*, 62 Wis.2d 57, 214 N.W.2d 288 (1974); *Lake Geneva v. Smuda*, 75 Wis.2d 532, 249 N.W.2d 783 (1977).
147. Wis. Stat. § 60.61(5).
148. Wis. Stat. § 62.23(7)(h). What about other structures? See Wis. Stat. § 62.231(5): "Notwithstanding 62.23(7)(h), an ordinance [zoning wetlands in shorelands] may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on May 7, 1982, related to that structure."
149. Wis. Stat. § 59.69(10)(a).
150. *Jefferson County v. Timmel*, 261 Wis. 39, 51 N.W.2d 518 (1952).
151. Wis. Stat. § 60.61(5).
152. *Marris v. City of Cedarburg*, 176 Wis.2d 14, 498 N.W.2d 842 (1993).
153. *Marris v. City of Cedarburg*, 176 Wis.2d 14, 498 N.W.2d 842 (1993).
154. See *State ex rel. Home Ins. Co. v. Burt*, 23 Wis.2d 231, 127 N.W.2d 270 (1964) in which the Court found that the cost of repairing a structure damaged by a fair was 26% of the fair market value but over 50% of the assessed value. The Court ordered a variance to be granted for the repairs.
155. *Waukesha County v. Pewaukee Marina, Inc.*, 187 Wis.2d 18, 522 N.W.2d 536 (Ct. App. 1994).
156. *Waukesha County v. Seitz*, 140 Wis.2d 111, 409 N.W.2d 403 (Ct. App. 1987) (citing 1 R. Anderson, **American Law of Zoning**, 3d, § 6.50 (1986)).
157. *Waukesha County v. Seitz*, 140 Wis.2d 111, 409 N.W.2d 403 (Ct. App. 1987).
158. *Waukesha County v. Seitz*, 140 Wis.2d 111, 409 N.W.2d 403 (Ct. App. 1987).
159. *Waukesha County v. Pewaukee Marina, Inc.*, 187 Wis.2d 18, 522 N.W.2d 536 (Ct. App. 1994).
160. Wis. Stat. § 62.23(7)(h) (cities and villages); Wis. Stat. § 59.69(10)(a) (counties); Wis. Stat. § 60.61(5) (towns). The statutes do not say if the 12 month period must be consecutive.
161. *Walworth County v. Hartwell*, 62 Wis.2d 57, 60, 214 N.W.2d 288, 289-90 (1974).
162. *Walworth County v. Hartwell*, 62 Wis.2d 57, 60, 214 N.W.2d 288, 289-90 (1974); *Town of Yorkville v. Fonk*, 3 Wis.2d 371, 88 N.W.2d 319 (1958).
163. *City of Lake Geneva v. Smuda*, 75 Wis.2d 532, 249 N.W.2d 783 (1977). The issuance of a permit allowing the use does not establish legality. The use may have not been legal even under the prior ordinance. A permit issued for a use prohibited by a zoning ordinance is illegal. *Foresight, Inc. v. Babl*, 211 Wis.2d 279, 565 N.W.2d 279 (Ct. App. 1997).
164. *Village of Menomonee Falls v. Veierstahler*, 183 Wis.2d 96, 98, 515 N.W.2d 290, 292 (Ct. App. 1994) (conversion of a tavern to a nonalcoholic social club was deemed to be an abandonment of the prior nonconforming use).
165. *City of Lake Geneva v. Smuda*, 75 Wis.2d 532, 249 N.W.2d 783 (1977)(casual and occasional use of an upstairs apartment as a separate dwelling); *Walworth County v. Hartwell*, 62 Wis.2d 57, 60, 214 N.W.2d 288, 289-90 (1974).
166. *Walworth County v. Hartwell*, 62 Wis.2d 57, 214 N.W.2d 288 (1974); see also *Sohns v. Jensen*, 11 Wis.2d 449, 105 N.W.2d 818 (1960), in which an automobile repair garage owner sought nonconforming use status for the operation of an automobile salvage yard. The Court found that prior to the enactment of the ordinance, the automobile salvage operations were merely incidental to the operation of the repair service.

Guide to Community Planning In Wisconsin

167. *Waukesha County v. Seitz*, 140 Wis.2d 111, 409 N.W.2d 403 (Ct. App. 1987) (the operation of boat rentals, boat storage, fuel and bait sales, cottage rental, pier and mooring facilities all helped constitute the overall business that was given nonconforming status).
168. It is possible to have various combinations of these concepts such as buildings that are nonconforming as to both structure and use, or a conforming structure and a nonconforming use, etc.
169. See *Town of Delafield v. Sharpley*, 212 Wis. 2d 332, 569 N.W.2d 779 (1997) as an example of a successful effort by a community to prohibit a junk yard as a public nuisance. The junk yard owner claimed that the junk yard was a valid and legal nonconforming use because it predated the adoption of the town's zoning ordinance. The Court of Appeals found the valid nonconforming use status of the property was irrelevant. According to the Court of Appeals, "A valid, nonconforming use, irrespective of its duration, may be prohibited or restricted when it also constitutes a public nuisance or is harmful to the public health, safety or welfare."
170. Chapter 823 of the Wisconsin Statutes allow the state, counties, cities, villages, towns, as well as individuals, to bring a lawsuit in court to abate, or stop, public nuisances. A nuisance is an unreasonable activity or use of property that substantially interferes with comfortable enjoyment of life, health, safety or another or others. *State v. Quality Egg Farm, Inc.*, 104 Wis.2d 506, 311 N.W.2d 650 (1981). Determining what constitutes a public nuisance depends on the facts of the specific situation. What may be a nuisance in one situation may not be a nuisance in another situation. The statutes, however, attempt to define certain uses as nuisances such as "bawdyhouses," dilapidated buildings, and dilapidated wharves and piers in navigable waters. Wis. Stat. §§ 823.09, .21, .215.
171. E.g., the regulation of billboards for towns does not fall within the zoning enabling statutes. Wis. Stat. § 60.23(29).
172. *Norton Shores v. Carr*, 81 Mich. App. 715, 265 N.W.2d 802 (1978). See, e.g., Wis. Stat. §§ 62.04, 62.11(5).
173. Wharfs and piers--1 year amortization period after change in ownership (Wis. Stat. § 30.13(4)(C)); signs--5 year amortization period (Wis. Stat. § 84.30(5)); junkyards--5 year amortization period (Wis. Stat. § 84.31(4)).
174. *Columbia County v. Bylewski*, 94 Wis.2d 153, 288 N.W.2d 129 (1980).
175. *Columbia County v. Bylewski*, 94 Wis.2d 153, 288 N.W.2d 129 (1980). See Wis. Stat. § 59.69(11) outlining the procedure for enforcement of the county zoning ordinance; Wis. Stat. § 62.23(7)(f) and Wis. Stat. §§ 62.23(8) to (9) outlining enforcement options for cities, villages, and towns exercising zoning under village powers including the authority to impose fines and imprisonment for failure to pay fines; and Wis. Stat. § 60.61(6) outlining enforcement procedures for town zoning.
176. In *Village of Sister Bay v. Hockers*, 106 Wis.2d 474, 317 N.W.2d 505 (Ct. App. 1982), the court of appeals determined that municipalities may obtain injunctive relief and the imposition of fines in the same action. The court had no discretion to impose less than the minimum fine prescribed by ordinance. In this case, the minimum fine was \$10. The court followed the provision in the Village's ordinance that stated that each day a violation continues is a separate violation. The violation lasted 778 days. The fine imposed by the court was \$7,880.
177. *Forest County v. Goode*, 219 Wis.2d 655, 579 N.W.2d 715 (1998).
178. *State ex rel. League of Women Voters v. Outagamie County*, 113 Wis.2d 313, 325-26, 324 N.W.2d 887 (1983).
179. Wis. Stat. § 62.23(7)(e)4 (cities, villages, and towns exercising zoning under village powers); Wis. Stat. § 59.694(4) (counties); and 60.65(5) (towns). See also *State ex rel. Brookside v. Jefferson Board*, 131 Wis. 2d 101, 388 N.W.2d 593 (1986).
180. Wis. Stat. § 62.23(7)(e)10 (cities, villages, and towns exercising zoning under village powers); and Wis. Stat. § 59.694(10).

Guide to Community Planning In Wisconsin

181. Wis. Stat. § 2.23(7)(f)2 and Wis. Stat. § 2.23(8) (cities, villages and towns exercising zoning under village powers). Under county zoning, the suit must be brought by an owner of real estate within the district affected by the regulation. Wis. Stat. § 59.69(11).

Chapter 7

SUBDIVISION REGULATIONS

Chapter 7

1. The Subdivision Regulation Framework

Subdivision Powers and Responsibilities

Condominium Subdivisions

2. The Local Subdivision Review Process

Pre-Application Conference

Preliminary Plat Review

Final Plat Review

Vacations and Replats

3. Subdivision Design Standards

4. Financing Subdivision Improvements

5. Resource Materials

6. Endnotes

1. The Subdivision Regulation Framework

Subdivision (or land division) regulations provide the procedures and standards for dividing a large parcel of land into smaller parcels for sale and development. Subdivision regulations require a developer to meet certain conditions in order to record a plat.

As with zoning, subdivision regulation is a land use control used to carry out a community's plan. However, the regulations governing the division of land are different from zoning regulations in two primary areas.

First, while zoning regulations are meant to control the use of property, subdivision

regulations address the quality of development (the availability of public services, services the subdivider must provide, the layout of the site, etc.). The way in which lands are divided plays a key role in the orderly development of a community. Properly administered subdivision regulations can be more useful in achieving planning goals than zoning ordinances.

The impact of subdivision regulations is more permanent than zoning. Once land is divided into lots and streets are laid out, development patterns are set. Subdivision control ordinances often give a community its only opportunity to ensure that new neighborhoods are properly designed. Failure to plan for the subdivision of land is felt in many areas such as tax burdens, the high cost of extending utilities, street and traffic problems, overcrowded schools, health hazards caused by waste water treatment systems unsuited to a particular area, and a loss of a sense of community.

Second, the requirements and procedures for regulating subdivisions provided under the *Wisconsin Statutes* are very different from the statutory requirements for zoning. Though it has three separate zoning enabling laws for cities/villages, towns, and counties (discussed in Chapter 5), Wisconsin has only one local enabling law for local subdivision regulation. That law is found in Chapter 236 of the *Wisconsin Statutes*. This single enabling law provides the authority to adopt subdivision regulations is very different from the authority for zoning. For example, as discussed later in this chapter, towns do not need county approval to adopt subdivision regulations. Likewise, counties do not need town approval for

Guide to Community Planning in Wisconsin

the county subdivision regulations to apply within that town.

However, the line between zoning and the regulation of subdivisions is not always clear. For example, both zoning and subdivision regulations address issues of lot size. Planned unit developments also frequently combine elements of zoning and subdivision regulation. This overlap is often a source of confusion especially because of the lack of uniformity between the subdivision enabling legislation and the zoning enabling legislation. There is no hierarchy of land use controls. Zoning does not take priority over the subdivision process or vice versa. Development approval must often proceed on two tracks: zoning approval and subdivision approval.

To be effective, subdivision regulations must be integrated with other local government plans, policies, and ordinances. Communities need to make sure that the requirements of their zoning ordinances are consistent with the requirements of their subdivision regulations. Subdivision regulations also need to be coordinated with official maps and capital improvement plans and policies. A solid community planning process can help ensure that all plan implementation tools are working consistently to achieve the community's objectives.

1.1 The Evolution of Subdivision Control in Wisconsin.

Public regulation of the division of land in Wisconsin has a long history that predates zoning and other land use regulations found in many communities today. The evolution of the state's subdivision laws reflects the increasing complexity of land development activities and the need for a coordinated framework.

The roots of land division regulation in Wisconsin predate the state with the passage by the national government of the Federal Land Ordinance of 1785. This national land use law regulated the surveying and disposition of lands west of the state of Ohio. This is the law that established townships encompassing 36 square miles, with each square mile called a "section"

comprising 640 acres. The diagram on page 149 summarizes this framework for surveying.

Surveys that rely on the framework of the Federal Land Ordinance are often called a "public lands survey," a "government land survey," or a "metes and bounds conveyance." These surveys are best suited for large parcels in rural areas. The legal description for a conveyance under this system is known as a "metes and bounds" description. These legal descriptions become increasingly cumbersome with further divisions of land ownership. For developing areas, this system of legal description is inadequate.

An example of a metes and bounds legal description of a parcel would be: *"the north half of the southwest quarter of Section 20, Township 3 North, Range 4 West, Name of County, Wisconsin."*

Wisconsin's subdivision laws can be traced back to 1849, when the first state legislature adopted the statutory requirement for a survey and plat to subdivide land. This early requirement reflected a strong purpose for subdivision laws that still exists today--ensuring adequate legal descriptions and proper survey monumentation of subdivided land to promote the marketability of that land.

Later amendments to the state's subdivision laws reflect the increasing needs of development occurring in the state. In 1882, subdivision streets and alleys were required to conform to existing ones. In 1905, the approval of the common council was required for plats within the limits of cities of the second, third, and fourth class and of the village board for subdivisions within villages. Cities of the first, second, and third class were given extraterritorial control over plats within 1½ miles of their limits in 1909.

The United States Department of Commerce published the Standard City Planning Enabling Act in 1928. This model law was intended to be used by states to adopt similar laws to promote planning in cities, including encouraging the local regulation of subdivisions.

Guide to Community Planning in Wisconsin

This model law followed by several years the publication of the Standard State Zoning Enabling Act. Because subdivision regulation was included with the model planning act and zoning was not, historically the relationship between planning and subdivision has been closer than the relationship between planning and zoning.¹ The Standard City Planning Enabling Act established a framework for planning that is still reflected in Wisconsin's laws.

Responding to the movement for local regulation of subdivisions, Wisconsin amended its laws in 1935 to allow local regulation of subdivisions. The 1935 amendments also tightened the surveying, monumenting, and mapping requirements, established a minimum lot size, and added the need to receive the approval of the State Board of Health.

In 1949, the State Highway Commission was given approval authority over subdivisions impacting state highways.

With the growth boom that hit the state following the end of the Second World War, amendments in 1951 allowed broader local regulation of subdivisions. In 1955, the Wisconsin Legislature enacted the current state law governing the division and platting of land.²

Finally, reflecting the fiscal impacts of development on communities, in 1994 the state passed impact-fee enabling legislation. The impact fee law authorizes counties, cities, villages, and towns to impose impact fees on development to help pay for the public facility related costs associated with development.

1.2 Subdivision Powers and Responsibilities: State, Counties, Towns, Cities, and Villages

Wisconsin law of subdivisions provides for local control of the subdivision process, subject to minimum statutory requirements.³ The statutory requirements provide for limited state

oversight of the subdivision process. A local community is not required to adopt a subdivision ordinance. The minimum standards set forth in state law, however, will apply despite the absence of a local ordinance. This is not so with zoning because there are areas of the state with no zoning.

Wisconsin's current law regulating the subdivision of land appears in Chapter 236 of the *Wisconsin Statutes*. That Chapter of the *Statutes* declares: "No map or survey purporting to create divisions of land or intending to clarify metes and bounds descriptions may be recorded except as provided by this chapter."⁴ Recording of land divisions allows for the subsequent sale and development of land.⁵ It is therefore critical that people interested in dividing their land comply with the requirements of Chapter 236.

Chapter 236 details things like surveying requirements, and the margin width and type of paper used for plats. The Chapter also outlines the subdivision approval process, including the

authority for counties, towns, cities, and villages to adopt their own subdivision ordinances. These latter issues are explored below.

The regulation of the division of land in Wisconsin involves a complex set of overlapping governmental authorities. For example, a proposed subdivision located within the extraterritorial plat approval jurisdiction of a city or village⁶ could be subject to review by certain state agencies, the county, the town, and the city or village.⁷ If there is a conflict in the requirements of the various reviewing authorities, the proposed subdivision must comply with the most restrictive requirements.⁸

It is important to keep in mind that the authorities and responsibilities of the various units of government involved with the regulation of land divisions are different from the authorities

An example of the legal description of a platted lot would read "Lot 8, Block 2 Johnson's Third Addition, Name of County, Wisconsin."

What is a "plat"?
A "plat" is a map of a subdivision.

Guide to Community Planning in Wisconsin

and responsibilities that exist under the various zoning enabling laws in the state. These subdivision authorities are represented graphically in Table 1.

Table 1 SUBDIVISION AUTHORITIES

LOCATION OF SUBDIVISION	APPROVING AUTHORITY	OBJECTING AUTHORITY
City of Milwaukee	⇒ Common Council	⇒ None
Inside a city or village	⇒ City Council or Village Board	⇒ (1) Plat Review Section, Wisconsin Department of Administration for conformity with statutory surveying and layout requirements, final plat format and certificates. (2) Wisconsin Department of Transportation if the subdivision abuts a state trunk highway or connecting street for access issues. (3) Wisconsin Department of Commerce if the subdivision is not served by public sewer. (4) Wisconsin Department of Natural Resources and the Wisconsin Department of Commerce may require additional conditions for plats near navigable waterways. (5) County planning agency, if there is one with a full time staff, for conflict with park, parkway, major highways, airports, drainage channels, schools, or other planned public developments.
Within the extra-territorial plat approval jurisdiction of a city or village	⇒ (1) Town Board (2) County Planning Agency, if it has full time employee for planning/zoning (3) City Council/Village Board with extraterritorial plat approval jurisdiction on the basis of a subdivision ordinance or an official map	
Outside the extra-territorial plat approval jurisdiction of a city or village	⇒ (1) Town Board (2) County Planning Agency, if there is one	

1.2.1 State Agency Review

Under Wisconsin's law for the platting of lands, all land divisions that meet the state definition of a "subdivision"⁹ are subject to review by several state agencies. State statutes define a "subdivision" as:

"a division of a lot, parcel, or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where:

(a) *The act of division creates 5 or more parcels or building sites of 1½ acres each or less in area; or*

(b) *Five or more parcels or building sites of 1½ acres each or less in area are created by successive divisions within a period of 5 years.*"¹⁰

These subdivisions are often called "state subdivisions." Divisions of lands that meet this definition must comply with certain statutory requirements. In particular, state subdivisions have to be reviewed by certain state agencies. State agency review ensures that subdivisions statewide meet at least the minimum standards set forth in state statute and in certain state agency rules.

Guide to Community Planning in Wisconsin

All state subdivisions must be submitted to the Department of Administration which reviews the plats for compliance with the statutory surveying and layout requirements and other statutory requirements.¹¹

The Department of Commerce must review state subdivisions not served, or planned to be served, by a public sewer for compliance with the Department's rules relating to lot size and lot elevation necessary for proper sanitary conditions.¹²

If the subdivision abuts or adjoins a state trunk highway, the Department of Transportation must review it for compliance to the Department's rules relating to the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.¹³

As a further condition of approval, when a plat includes lands located within 500 feet of the ordinary high water mark of a navigable body of water, the Department of Natural Resources or the Department of Commerce may require assurance of adequate drainage areas for private sewage disposal systems or provisions by the owner for public sewage disposal facilities.¹⁴

These state agencies have the authority to **object** to plats consistent with their review authority. If a state agency objects to a plat, a subdivision cannot be approved or deemed approved by the local government having approval authority until the objections have been satisfied.¹⁵

Land divisions that do not meet the statutory definition of a subdivision can occur under the statutory process for certified survey maps.¹⁶ Certified survey maps cannot exceed four parcels of land. Certified survey maps do not involve review by the state agencies.

1.2.2 Local Government Authority

Local governments have the authority to **approve** proposed subdivisions. As summarized in Table 1, this authority rests with the city council or village board for proposed subdivisions located within the boundaries of that city or village.¹⁷ In towns, within the extraterritorial plat

approval jurisdiction of a city or village, plat approval is exercised by the town board, the county planning agency,¹⁸ and the city council or village board.¹⁹ In towns outside the extraterritorial plat approval jurisdiction of a city or village, plat approval is exercised by the town board and by the county planning agency, if there is one.²⁰ If there is a conflict in the requirements of a local government with approval authority, the proposed subdivision must comply with the most restrictive requirements.²¹

The authority to approve proposed plats may be delegated by the governing body of a local community to the local planning committee or commission.²²

The *Wisconsin Statutes* provide that the approval of a final or preliminary plat can only be conditioned upon compliance with:

- (a) The requirements of Chapter 236 governing the platting of lands;
- (b) Any municipal, town or county ordinance;
- (c) Any local master plan or official map adopted under section 62.23 of the *Statutes*;
- (d) Department of Commerce rules relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer;
- (e) Department of Transportation rules relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.²³

The first three bases for review of a proposed subdivision are probably the most important for local governments. They are explored more fully below.

1.2.2.1 *The Requirements of Chapter 236.*

The review and approval process discussed above is not dependent upon a local subdivision ordinance. In communities without subdivision control ordinances, the standards specified above are the only basis the community

Guide to Community Planning in Wisconsin

can use for approving a proposed subdivision. According to Wisconsin law, no approving authority may condition rejection of a preliminary or final plat upon any other reason than those stated in the Statutes.²⁴

Chapter 236 of the Wisconsin Statutes, however, establishes only minimum requirements for subdivisions that apply statewide. Many requirements are procedural and technical standards that need to be followed for the platting and recording of land divisions. Only a few requirements of Chapter 236 address “quality” issues related to the design of subdivisions.

Therefore, relying on the statutory standards of Chapter 236 alone, gives a local government only a limited opportunity to influence development within the community. The decisions of courts in Wisconsin also reflect the need to have local subdivision ordinances. For example, the statutes provide that local communities may also condition approval of a plat on requirements that the subdivider make and install public improvements reasonably necessary for the development or provide security that the improvements will be made within a reasonable period of time.²⁵ However, the courts have held that a local community must have an ordinance to make use of this provision.²⁶

The statutes also provide that local communities may require the dedication of public streets and other public ways constructed according to municipal specifications²⁷ and require that the subdivider pay for the cost of alterations to existing utilities caused by the land division.²⁸ Finally, communities may require the dedication of easements for solar or wind energy purposes.²⁹

1.2.2.2 Any Local Ordinance.

The statutes allow a community to condition its approval of a plat on compliance with **any** local ordinance, be it a zoning ordinance, subdivision ordinance, sanitary ordinance, design review ordinance, etc. Of particular importance is the subdivision ordinance and the standards it can provide for how development should occur.

The statutes do not provide any standards for many conditions listed in the statute. For example, how wide should a street be? Should it

include sidewalks? Should it include curbs and gutters? If a community wants to condition its approval based on some latter requirements, the community must specify standards in a local ordinance to avoid acting arbitrarily.³⁰ It is important that communities plan for issues of growth and change and adopt the appropriate local subdivision regulations before receiving an application for a proposed subdivision. While local units of government have broad discretion in the exercise of their land use authorities, they need to articulate the standards in an ordinance that will guide their actions.

Chapter 236 expressly provides cities, villages, counties, and towns with the authority to adopt local subdivision regulations. In order for a local community to adopt a local subdivision ordinance, it must establish a planning agency,³¹ and the local ordinance must be more restrictive than the minimum standards of the state statutes.³² The process for adopting a subdivision ordinance simply requires the recommendation of the planning agency and the holding of a public hearing by the governing body. The ordinance should also be published in a form suitable for public distribution.³³ A local government may want to use a special committee, work group, or task force made up of diverse interests to help prepare a draft of the ordinance. Citizen participation is also important in the preparation of the ordinance.

A local ordinance is the best way for a community to articulate the standards for the installation of public improvements such as streets, dedication requirements for public facilities such as parks and roadways, and other requirements governing the division of land. Local subdivision regulations give communities an important opportunity to influence the quality of development in their community.

Local subdivision regulations can be tailored to address issues of growth and change unique to the community and not adequately addressed by the statewide standards. The content of local subdivision control ordinances, other local ordinances, and the local official map are critical to providing an additional legal basis for reviewing and making decisions about proposed

Guide to Community Planning in Wisconsin

divisions of land and future development in the community. Not having an ordinance limits the grounds upon which a local community can reject a proposed subdivision.³⁴ Subdivision review often involves the art of negotiation. It is critical for local communities to have a subdivision ordinance to guide their negotiations.

It is common for local ordinances to include a more restrictive definition of “subdivision” than the statutory definition.³⁵ An example of a more restrictive definition would be: “the act of division that creates two or more parcels or building sites of eighty (80) acres or less.” Using a more restrictive definition of “subdivision” gives the community the opportunity to review and approve those divisions of lands in the community that would not otherwise receive review because they do not fall within the state definition of “subdivision.”

A more restrictive definition of subdivision is known generically as a non-state subdivision because it is not required by Chapter 236 to be reviewed by the state agencies. A local ordinance can require that a non-state subdivision be sent to the state for review by the appropriate state agencies with objecting authority. State agency plat review will be the same as for state subdivisions.

Many local ordinances include several definitions of a “subdivision.” One definition may include “major subdivision,” which addresses large divisions of land. Other definitions may include “minor land division,” “minor subdivision,” or “certified survey map.” These latter definitions usually refer to divisions of land that are not “major subdivisions.” These smaller divisions of land often involve an abbreviated approval process.

Communities with subdivision control ordinances have some flexibility in establishing definitions and other standards. In those communities with a subdivision ordinance, the local ordinance is the best explanation of how the subdivision process works. Persons interested in understanding the subdivision process should refer to those ordinances.

The overlapping authority that different units of local government may have also means

that a proposed subdivider may need to review several different subdivision ordinances. This overlapping authority is also a source of confusion, particularly with respect to the different dynamics of the county’s role and how the county relates to towns, cities, and villages. These dynamics are explored in sections 1.2.3 to 1.2.5 below.

1.2.2.3 The Master Plan.

A recent decision of the Wisconsin Supreme Court strengthens the use of the local master plan as the basis for reviewing proposed subdivisions. The case is entitled *Lake City Corp. v. City of Mequon*.³⁶

The facts behind the case are as follows. In 1977, Lake City Corp. purchased 59 acres of land in Mequon, Wisconsin, a northern suburb of Milwaukee. In 1984, at the request of Lake City Corp., Mequon rezoned the property to allow multi-family, single family residential, and commercial development. In 1992, Mequon began a comprehensive revision of its master plan and zoning ordinances to address issues of growth in the community. During the planning process, Lake City Corp. applied to Mequon’s plan commission for preliminary plat approval.³⁷ The plat conformed with the existing zoning ordinances. Before acting on Lake City Corp.’s application, the plan commission amended its master plan to limit the area including Lake City Corp.’s property to residential uses with a minimum lot size of 1.5 acres per dwelling unit. The plan commission then voted to deny Lake City Corp.’s request for preliminary plat approval because the proposed plat conflicted with the newly amended master plan.

Lake City Corp. then sued Mequon. The circuit court held that the plan commission had the authority to deny Lake City Corp.’s application for preliminary plat approval, based upon the amendment to the master plan. The Wisconsin Court of Appeals reversed the decision of the circuit court because it determined that state law did not allow a plan commission to use its master plan as the basis for denying a preliminary plat. The Wisconsin Supreme Court reversed the decision of the Court of Appeals.

Guide to Community Planning in Wisconsin

According to the decision of the Supreme Court, a city, village, or town exercising village powers can rely on an element contained solely in its master plan as the basis for rejecting a plat, subject to the following:

□ If a municipality has an official map, the plan commission can deny the approval of a plat that conflicts with the local master plan, so long as any common elements contained in both the master plan and the official map are consistent (not contradictory);

□ A master plan is consistent with an official map (if there is one) even if the master plan contains additional elements that the official map does not;

□ If there is a conflict between a zoning ordinance and a master plan, the master plan prevails, except in the extraterritorial plat review jurisdiction of a municipality. The plan commission also cannot override the zoning decisions of the governing body of the community.

Even without the Court's decision in *Lake City*, the same objectives could be achieved with a provision in a local subdivision ordinance that proposed plats must be consistent with the community's master plan.

1.2.3 Counties and Towns (Unincorporated Areas)

County subdivision authority as it relates to towns, is much different from county zoning authority under Chapters 59 and 60 of the Wisconsin Statutes. County/town zoning entails a cooperative exercise of the zoning power by both the county and the town. For example, under the county/town zoning relationship, if counties adopt a county-wide zoning ordinance, the towns within the county have the option of adopting county zoning as it relates to that town. Towns can elect not to be subject to county zoning. Towns under county zoning have "veto" power over zoning changes. Towns under county zoning that seek to adopt their own town zoning ordinances must have the county approve the zoning ordinance.

County authority to regulate subdivisions under Chapter 236, however, does not involve the

same town/county approval process. Counties with county planning agencies³⁸ have the authority to **approve** subdivisions in the unincorporated areas of the county. Counties may adopt subdivision ordinances that specify the standards upon which to base the county's review of proposed subdivisions in the unincorporated areas. Towns are not required to adopt the county subdivision ordinance for it to be effective within the town. Towns do not have "veto" power similar to the veto power under county/town zoning.

Towns, however, must also **approve** proposed subdivisions located within the town. Towns can also adopt their own subdivision ordinances and do not need county approval of those ordinances. If there is a conflict between a county subdivision ordinance and a town subdivision ordinance, the proposed subdivision must comply with the most restrictive requirements.³⁹ Thus, under Wisconsin's land division laws, counties can establish a county-wide standard for the review of proposed subdivisions, and individual towns are free to adopt subdivision ordinances with standards that are more restrictive than the county-wide standards.

1.2.4 Cities/Villages (Incorporated Areas)

County authority over subdivisions in cities and villages is also different from the relationship of county zoning authority to the zoning authority of cities and villages. County zoning authority does not extend into incorporated areas. However, counties with a county planning agency that employs on a full-time basis a professional engineer, a planner, or other person charged with the duty of administering zoning or other planning legislation have the authority to **object** to subdivision plats located in incorporated areas.⁴⁰

A county's objection to a proposed subdivision is limited. A county's objection in a city or village must be based on a conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments.⁴¹ Under state statutes, if a county objects to a plat in a city or

Guide to Community Planning in Wisconsin

village, the city or village cannot approve the subdivision until the objections have been satisfied.⁴²

The county's objecting authority is not dependent upon the county having a subdivision ordinance. All the statutes require is that a county adopt a policy statement that requires submission of subdivision plats. A county subdivision ordinance, however, can give a county standards for evaluating a proposed plat within a city or village.

Few county subdivision ordinances in Wisconsin provide guidance for interpreting the county's objecting authority. For example, exploring what is meant by a "conflict with" a park parkway, expressway, etc., or how a county will determine that a proposed subdivision will conflict with a school may be beneficial in an ordinance.

1.2.5 Extraterritorial Plat Review

Several references have been made to extraterritorial plat approval jurisdiction. The geographical area in which a city or village can exercise its extraterritorial powers is the same as the extraterritorial zoning jurisdiction. That is, the unincorporated area within three miles of the corporate limits of a first, second, or third-class city; or within 1½ miles of a fourth class city or a village.

However, the process for exercising extraterritorial plat review is very different from the process for exercising extraterritorial zoning. Extraterritorial zoning requires town approval of the zoning ordinance.⁴³ It is not widely used in the state. Extraterritorial plat review applies automatically if the city or village adopts a subdivision ordinance or an official map.⁴⁴ The town does not approve the subdivision ordinance for the city or village. The city or village may waive its extraterritorial plat approval jurisdiction if it does not want to exercise it.⁴⁵

The purpose of extraterritorial plat approval jurisdiction is to help cities and villages influence the development pattern of areas outside the city/village boundaries that will probably be annexed to the city or village. In addition, it helps cities and villages protect land use near its

boundaries from conflicting uses outside the city/village limits.⁴⁶

Again, since a town and the county may also have a subdivision ordinance that applies in the extraterritorial area, if there is a conflict in the requirements of the various ordinances, the proposed subdivision must comply with the most restrictive requirements.⁴⁷ Thus, coordination between the city/village, the town, and the county will be helpful in reducing costly scattered development.

Overlapping authority by multiple cities and villages in the extraterritorial area is prohibited. Where the extraterritorial areas of two or more cities or villages overlap, the application of the respective subdivision ordinances of those cities or villages shall be divided on a line all points of which are equidistant from the boundaries of each city or village so not more than one ordinance will apply.⁴⁸ Drawing the line could divide a proposed subdivision. This may mean that some lots of a proposed subdivision will be subject to the authority of one city while the remaining lots are subject to the authority of another city.⁴⁹

The scope of the extraterritorial plat approval jurisdiction has been the subject of several recent court decisions that limit the extraterritorial authority. The Wisconsin Supreme Court has held that a city or village does not have the authority to impose its own requirements and specifications for public improvements (streets and stormwater facilities) as a condition of extraterritorial plat approval jurisdiction.⁵⁰ A city or village also cannot condition approval of a plat in the extraterritorial area on annexation of the proposed subdivision to the city or village.⁵¹ The Wisconsin Court of Appeals has held that a municipality cannot use its extraterritorial plat approval jurisdiction to control the use of property. The court of appeals found this to be a zoning function that can be exercised only through an extraterritorial zoning ordinance.⁵²

In the *Lake City Corp. v. City of Mequon* case discussed earlier, the Court stated that the portion of its decision holding that, if there is a conflict between a zoning ordinance and a master plan, the master plan prevails, does not apply to

Guide to Community Planning in Wisconsin

the extraterritorial plat review jurisdiction of a municipality. Absent a conflict, presumably the Court's reliance on the master plan as a controlling document would apply.

Areas where the *Lake City Corp.* case might apply concern issues related to the quality of development. For example, contrary to its other decisions discussed above, the court of appeals has upheld the use of extraterritorial plat approval jurisdiction to reject a proposed subdivision based on the unsuitability of the land due to stormwater runoff, impact on the flow of groundwater, erosion, and the loss of wildlife habitat.⁵³ According to the court, these are issues that relate to the quality of the development.

1.3 Condominium Subdivisions

Increasingly in Wisconsin, single family detached residential developments are being proposed and built as condominiums. While many people think of condominiums as apartment buildings or other multi-family type structures, a condominium is really a form of ownership.

Typically under the condominium form of ownership, each dwelling unit is owned by its occupant. The land on which the dwelling unit is built and the land separating the dwelling units may be owned in common by all of the development owners. A description of the common elements of a condominium is contained in a document known as the condominium declaration. The physical layout of single family detached residential developments built under a condominium form of ownership often looks the same as a residential subdivision built under traditional ownership methods where the occupant owns both the lot and the dwelling unit and there are no common elements.

The condominium form of ownership is very versatile and can be used to mix certain uses, such as residential uses and commercial uses. It also lends itself well to the preservation of open space and cluster development. The condominium form of ownership is also appealing to those who may want less costly housing or who do not want the responsibilities of maintenance associated with more conventional home ownership. Because of

these attributes, condominiums are very attractive for recreational housing.

Management of a condominium is controlled by a condominium association much as a traditional subdivision can be managed by a homeowners' or neighborhood association. Common responsibilities typically shared by the condominium association may include maintenance of the common spaces, landscaping, lawn/yard care, and snow removal. These responsibilities are often detailed in the associations' bylaws.

While a person may have difficulty distinguishing the physical appearance of a single family detached residential development built under a condominium form of ownership from a conventional subdivision, the law in Wisconsin does make some important distinctions. Subdivisions are governed by Chapter 236 of the Wisconsin Statutes and the detailed requirements for the division of lands contained in that chapter. Chapter 236 does not apply to condominium developments because land is not being subdivided.⁵⁴

The fact that condominiums do not need to comply with Chapter 236 should not make them automatically suspect as an evasion of the law. Condominiums are governed by Chapter 703 of the Wisconsin Statutes. That Chapter was passed in 1978 and is known as the "Condominium Ownership Act" and includes very strict requirements for the creation of condominiums.

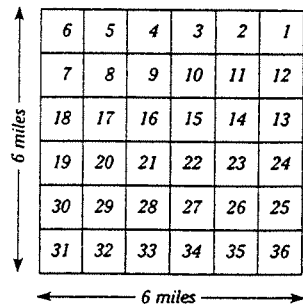
In addition, local zoning and subdivision regulation can apply to condominium developments if the ordinance says so. This is another confusing but important legal technicality. Unless the ordinance states that it applies to condominiums, the condominium law specifies that no subdivision ordinance may apply to any condominium.⁵⁵

A simple statement in the local subdivision ordinance saying the provisions of the ordinance apply to condominiums should suffice. Local communities can then apply the same zoning and subdivision requirements for conventional developments to condominium developments. Local zoning and subdivision

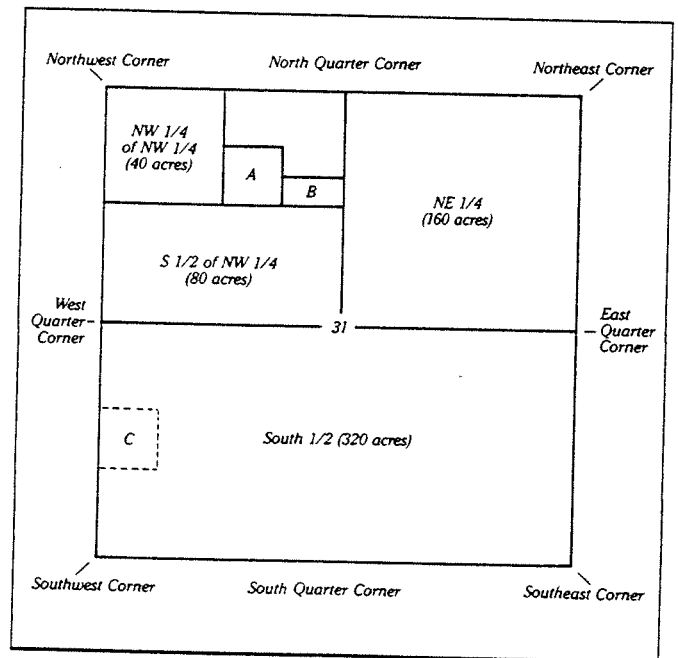
Guide to Community Planning in Wisconsin

regulations, however, cannot discriminate against condominium developments. Wisconsin law explicitly provides that zoning, subdivision, and other land use regulations may not prohibit the condominium form of ownership or impose any requirements upon a condominium that they would not impose upon a physically identical development under a different form of ownership.

The intent in applying local subdivision ordinances to a condominium development is not to prohibit or otherwise place additional burdens on a condominium development that a conventional development would not need to meet. Rather, the intent is to allow a community to decide whether to make condominium developments comply with the same requirements as conventional subdivisions for such things as street widths, storm drainage issues, and open space requirements.



*Numbering
sequence of sections in a
township.*



*Sample Section 31, Township 20 North, Range 10
East.*

Guide to Community Planning in Wisconsin

2. The Local Subdivision Review Process

This section and the following sections briefly outline some possibilities available to communities with local subdivision ordinances. According to the *Wisconsin Statutes*, the purposes for local subdivision control ordinances are to:

*"promote the public health, safety and general welfare of the community . . . lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playground and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land. The regulations . . . shall be made with reasonable consideration . . . of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land. . . ."*¹⁵⁶

The beginning sections of the local subdivision control ordinance also provides an important context for what a local community is trying to achieve through its regulation of new subdivisions. These sections may be called the "purpose," "intent," or "policy" sections of the subdivision control ordinance. Statements made in these sections reaffirm that the purpose of a subdivision control ordinance is to "protect and provide for the public health, safety, and general welfare of the community." The statements may specifically state the purpose of the ordinance is to:

Carry out a local plan by insuring that future growth and development of the community occurs according to the plan;

Ensure that the subdivision of land only occurs when adequate public facilities and improvements exist and proper provision is made for storm water drainage, water supply, transportation, waste water treatment, schools, parks and open space, and other public facilities and services;

Preserve natural vegetation and cover to promote the natural beauty and topography of the community and the value of the land while encouraging the wise use and management of natural resources;

Provide adequate light, air, and privacy, secure safety from fire, flood, and other danger, and lessen congestion in the streets and highways;

Ensure adequate legal descriptions and proper survey monumentation of subdivided land to promote the marketability of that land and to facilitate the division of larger tracts into smaller parcels of land;

Ensure that the land to be subdivided is of a suitable character that it can be used safely for building purposes and will not lead to the pollution of land, air, and water, including groundwater.

The local subdivision review process is often divided into a three-step process. However, not all local subdivision ordinances follow this process, and nothing in the law mandates that they follow such a process. Nevertheless, it is advisable for local ordinances to follow the three-step process. The first step should consist of a pre-application conference. The second step is the preliminary plat review, and the final step is the final plat review. These steps are discussed below. The review process can be different depending upon whether the subdivision is defined as a major subdivision or a minor subdivision. The local ordinance should outline the process that needs to be followed in the community.

2.1 The pre-application conference

At this conference, the developer may

Guide to Community Planning in Wisconsin

meet with members of the plan commission or other local officials and their staff, such as the highway engineer, planner, zoning administrator, or building inspector. At this time the developer usually presents a sketch plan of the proposed subdivision and perhaps other information.

The major purpose of the conference is to inform the staff and local officials of the community about the development proposal and to inform the developer about the various community plans, ordinances, and standards within the ordinances applicable to the proposed development. The conference should be an informal review and exchange of information. Formal review will occur later. This conference can avoid many future problems and misunderstandings. Unfortunately, in far too many instances, such a conference is never held. The developer prepares the preliminary plat and often fails to include all the necessary information. Mandating such a conference in the subdivision control ordinance, therefore, may be advisable.

Questions to be asked at the conference and throughout the subdivision review process include:

Is the proposed development consistent with the community's master plan? What is the zoning for the area where the proposed subdivision will be?

How will the proposed subdivision be financed? What is the public expected to pay and how? What is the developer expected to contribute and how?

What types of services are required to meet the expected demands of the proposed subdivision--schools, police, fire, etc.? What does the school board think of the proposed subdivision?

What is the impact of the proposed development on facilities owned by the community--sewers, water, roads, etc.? Is the capacity of those facilities sufficient to meet the demands of the proposed subdivision? Does the proposed subdivision impact the design life of any of the community's facilities?

What are the existing physical conditions of the site (soils, slope, vegetation, drainage) and how will they be affected? Is the entire site appropriate for development?

What is the existing traffic pattern? How will the proposed subdivision relate to that pattern?

How will the proposal relate to neighboring land uses?

2.2 Preliminary Plat Review

After the pre-application conference, the developer should prepare a preliminary plat for presentation to the local community planning staff and planning commission for review. This step of the subdivision process essentially involves two components: 1) the substance or contents of the preliminary plat and 2) the process of the review.

2.2.1 What is the Preliminary Plat--Substance

At a minimum the preliminary plat consists of a map, drawn to a scale specified in the subdivision control ordinance. The map includes the information required by the subdivision control ordinance, such as the location of roads, streets, utility lines, parks, storm drainage, sewer and water lines, and information about adjacent parcels. Calling these plats "preliminary" is somewhat of a misnomer. A substantial amount of time and expense is involved with these maps. This is why a pre-application conference is important so people do not go to the expense of preparing preliminary plats only to be told they have to make major adjustments to the plat. Major issues should be aired prior to the preparation of the preliminary plats.

Often, the preliminary plat consists of a series of separate maps with the detailed information required by standards set in the local subdivision control ordinance. These maps may include a site plan, grading plan, utilities plan, drainage plan, planting plan and a map indicating street profiles and grades. Often it is helpful to require that the maps describe the existing conditions of the site and show the proposed conditions that will exist after the subdivision is

Guide to Community Planning in Wisconsin

completed. This allows the community to assess the impacts that the proposed development will have.

Often the preliminary plat is more than just a set of maps. The preliminary plat should also include a text that describes the proposed subdivision and may include pertinent information about the subdivision, such as financing, the relation of the proposed plat to adjacent properties, and the proposed phasing of the development and improvements. Local ordinances may also require the preparation of special studies to understand better the impacts of a proposed subdivision. These special studies may include an environmental assessment, a traffic impact study, a school impact study, or a fiscal impact study. These special studies are often prepared together with or as part of the preliminary plat.⁵⁷

These maps, text, and special studies give the community a substantial amount of information by which to evaluate the subdivision proposal. State statutes do not require the preparation of a preliminary plat. Nevertheless, at least for major subdivisions, local communities should require in their subdivision control ordinances that developers provide this type of information as part of the preliminary plat.

2.2.2 Preliminary Plat Review--Procedure

If a preliminary plat is required, the review of the information contained in the preliminary plat should include review by the local community that has the authority to approve the preliminary plat and by the state and county agencies that have the authority to object to certain aspects of the plat. The process for local review of preliminary plats, and the need to submit preliminary plats to the objecting agencies should be specified in the local subdivision control ordinance to avoid confusion for the person proposing the subdivision.

2.2.2.1 Local Approval

Since preliminary plats are not required by the *Wisconsin Statutes*, the statutes are of limited help in describing the preliminary plat review process. Preliminary plats, however, are

highly recommended and should be required by the local subdivision regulations for major subdivisions. In light of the technical design issues addressed in the preliminary plat, it is helpful for the community to have a planning and engineering staff available to review the plat.

A community has 90 days to act on the submission of a preliminary plat, unless the community and the subdivider agree to an extension. The options available to the local community are to approve, approve conditionally, or reject the preliminary plat. Failure to act within this time frame will constitute an approval of the preliminary plat.⁵⁸

Local action must be taken by all local units of government that have approval authority over the plat. Action taken by the local community must be in writing, including any conditions of approval or reasons for rejecting a plat.

2.2.2.2 Review by "Objecting" Agencies

Local ordinances that refer to the state's role in reviewing subdivisions are especially helpful when a community has a more restrictive definition of a subdivision for purposes of applying its subdivision ordinance.

If a preliminary plat is required, it is also advisable that the subdivision regulations specify that the preliminary plat must also be forwarded to the "objecting agencies" for review. The *Wisconsin Statutes* do not require that the objecting agencies review preliminary plats. They do, however, require that the objecting agencies review final plats. Having the objecting agencies review preliminary plats is advisable because the objections, if any, can be raised earlier in the process rather than at the final plat review stage. By objecting at the preliminary plat stage, the person proposing the subdivision should have more flexibility in addressing those objections and will not have incurred the added expenses of having prepared a final plat.

As discussed in section 1 of this Chapter, the state agencies that have the authority to review and object to preliminary or final plats are the Department of Administration, Plat Review Section; the Department of Commerce; the

Guide to Community Planning in Wisconsin

Wisconsin Department of Transportation; the Department of Natural Resources; and in certain cases the county planning agency. If one of these agencies objects to the plat, the local community cannot approve the plat until the objections have been satisfied.⁵⁹

2.3 Final Plat Review

Following approval of the preliminary plat, the developer should prepare the final plat consistent with the requirements of the local subdivision control ordinance and state law. As with a preliminary plat, there is a substance component to the final plat and a procedural component.

2.3.1 What is the Final Plat--Substance

The final plat is the subdivision map prepared for recording. It must meet specific statutory requirements⁶⁰ and contain certain certificates.⁶¹ The final plat must also meet any requirements found in the local subdivision control ordinance. The final plat should be substantially the same as the preliminary plat along with any changes required as a result of the review of the preliminary plat. The final plat review process may also include approval of the financial assurances detailed in a developer's agreement.

2.3.2 Final Plat Review--Procedure

The approval process is similar to that outlined above for the review of preliminary plats. The final plat must be submitted for review to the entities identified in Table 1 above. After approval, the final plat can be registered with the county register of deeds.

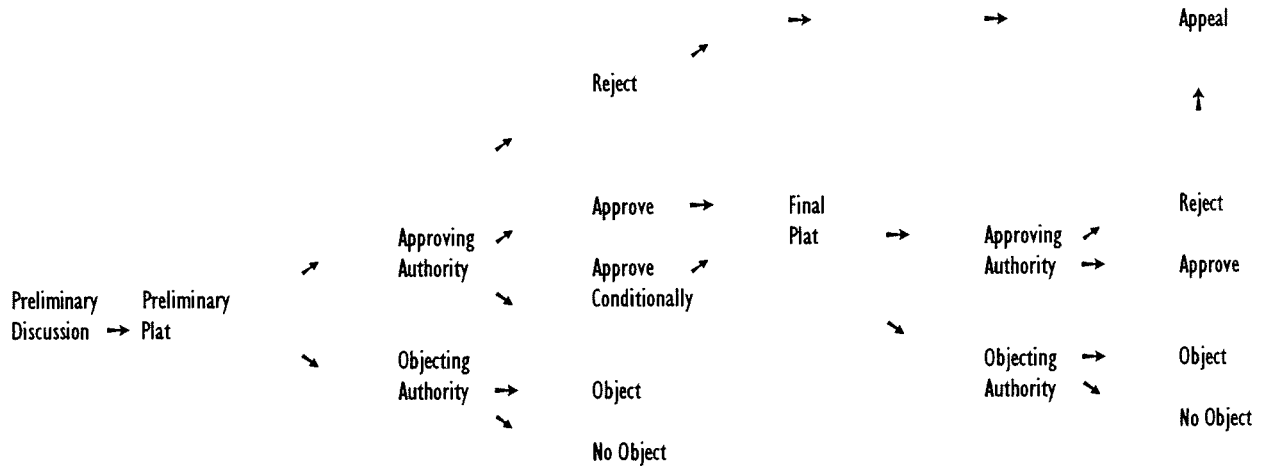
If the final plat conforms substantially to the preliminary plat as approved, including meeting the conditions of approval, it is entitled to approval. If the final plat is not submitted within 24 months of the approval of the preliminary plat, the local community may refuse to approve the final plat.⁶² The local community must approve or reject the plat within 60 days of submission, unless the community and the subdivider agree to an extension. Failure to act within the necessary time frame will mean that the plat is deemed approved.⁶³ If the final plat is rejected, the reason for the rejection must be stated in the minutes of the meeting and a written statement of the reasons for rejection must be supplied to the subdivider.

A person aggrieved by a community's failure to approve a plat may appeal to the circuit court.⁶⁴ For plats which are approved by the community and have the appropriate certifications, the final step is for the proposer of the subdivision to file the plat with the county register of deeds for recording.

A summary of the subdivision review process is included below as Table 2.

Guide to Community Planning in Wisconsin

**TABLE 2
GENERALIZED OVERVIEW OF THE SUBDIVISION PROCESS IN WISCONSIN**



BRIEF NOTES: Plat cannot be approved until objections have been satisfied. Wis. Stat. § 236.12(3).
Alternative process: submit original final plat to DATCP. Wis. Stat. § 236.12(6).

2.4 Vacations and Replats

Sometimes a community may be faced with a plat approved and recorded decades ago but never developed or only partially developed. Circumstances may have subsequently changed, so that the owner of the subdivision wants to vacate all or part of the existing plat and replat the land.

The *Wisconsin Statutes* allow for the vacation and replating of antiquated plats.⁶⁵ A replat that does not alter areas dedicated to the public is normally processed as a subdivision under the existing local subdivision control ordinance and the *Wisconsin Statutes*. Replats that propose to alter lands dedicated to the public normally require the initiation of a legal action in county circuit court by the owner of the subdivision; the owner of a lot in the subdivision; or the county board if it has acquired by tax deed an interest in the subdivision or a lot in the subdivision.

Guide to Community Planning in Wisconsin

3. Subdivision Design Standards

The design standards in subdivision regulations provide the specific standards for the design of the subdivision to protect public health and safety, preserve natural resources, and create a more desirable environment within which to live. Illustrating design standards in the subdivision ordinance is often more useful than cataloguing them in the ordinance.

The design standards may govern how the subdivision is laid out (e.g., lot size and shape, access, using natural features of a site) and the design of the improvements (e.g., road widths, sidewalks, tree plantings) the local community requires as a condition of approving the subdivision.

Usually, a local community will need to rely on a professional planning and professional engineering staff to check the design standards. Nevertheless, a community should have a checklist of all the factors required in its local subdivision control regulation to insure that all the requirements of the ordinance are met by the proposed subdivision.

Local subdivision control ordinances may include design standards for many of the following features:

□Integration of the natural environment. Subdivision review should insure that development is properly integrated into the natural environment. An ordinance can specify standards that limit construction on steep slopes and other natural features that are unsuitable for development.

Courts in Wisconsin have been supportive of decisions by local communities to deny proposed residential subdivisions based on the language of local subdivision control ordinances that prohibit the division of land that is unsuitable for residential use because the natural features of the site.⁶⁶ One case involved the language of a local ordinance that stated:

"No land shall be subdivided which is held by the City Plan Commission to be unsuitable for use by reason of flooding, bad drainage,

soil or rock formations with severe limitations for development, severe erosion potential, or unfavorable topography, or any other feature likely to be harmful to health, safety or welfare of future residents or landowners in the proposed subdivision or of the community."

Based on evidence presented to the plan commission, it decided that the land was unsuitable for development because of stormwater runoff concerns, impacts on groundwater runoff, and loss of wildlife habitat. The plan commission and the city council relied on the above language in the ordinance to reject a preliminary plat. The Wisconsin Court of Appeals upheld the decision of the community to reject the preliminary plat.

□Roads and streets. The ordinance may specify the standards for the design and construction of streets and related improvements within the subdivision. The regulations may also refer to a construction standards manual that contains the necessary information. These standards describe such features as street widths, street intersection designs, maximum grades, and length of cul-de-sacs. The placement of new streets should conform to the location and specifications for streets as shown on the local community's official map.

The design standards must relate to the proposed use that will occur on the land to minimize the adverse traffic impacts in the new subdivision. It is important when reviewing a proposed subdivision, to evaluate how that subdivision fits within the transportation system of the community.

A brief word about subdivisions and transportation planning . . .

Communities are built on a hierarchy of streets with different functional classifications. Each classification of streets serves different functions and has different design requirements to insure sufficient capacity, as to traffic volume, is provided so the street serves the purpose for

Guide to Community Planning in Wisconsin

which it is intended. The street classification system should be developed in the transportation element of a community's master plan or development plan. The classification should also be identified in the community's subdivision ordinance. The traffic volumes of these streets will also differ in the context of urban, suburban, or rural areas.

At the top of the hierarchy of streets are the major streets of the community, including freeways, parkways, and other highways. The function of these streets is to convey traffic from centers of employment, shopping, and other forms of community activity. These streets are interregional because they are meant to provide access to points beyond the boundaries of the community. Sometimes a community may make a distinction between major and minor arterials.

Next come collector streets designed to collect and distribute traffic from lower order residential streets to arterial streets. These streets are designed to promote free traffic flow.

Next come subcollector streets. The function of these streets is to collect traffic from residential areas and convey that traffic to the higher order streets (collector and arterial streets). These streets are designed to carry traffic within neighborhoods but not regional through traffic.

Close to the bottom of the hierarchy are the minor streets for residential access. These streets are designed to carry the least amount of traffic at the lowest speeds. An east-west orientation for these streets is desirable to allow for a configuration of lots that provide maximum solar access.

The lowest order streets are special purpose streets such as alleys, rural lanes, and cul-de-sacs. These streets have special functions and will have very limited design capacities for handling traffic.

Each proposed new use identified in a proposed subdivision will generate some level of traffic. The question to ask when considering a proposed subdivision is whether the streets have sufficient capacity to handle the development. The Institute of Transportation Engineers periodically produces a *Trip Generation* manual

that can be used as a general guideline for how much traffic a proposed use will generate. For example, a single-family detached residence will generate 10.06 average weekday trips. A low-rise apartment building will generate 6.60 average weekday trips per dwelling unit. A small shopping center will generate 166.35 average weekday trips for every 1,000 gross square feet of leasable area. A motel will generate 10.19 average weekday trips for every room. A mini-warehouse will generate 2.61 average weekday trips for every 1,000 gross square feet of building area.

When evaluating a proposed subdivision, it is therefore important to know what the proposed use will be for the land, the number of daily trips that will be generated by that use, the type of street system that must be built to meet that volume of traffic, and, finally, the design standards for the necessary streets. It is critical that the transportation system of the community be sufficient to handle any additional demands that the proposed new uses in the subdivision will generate.

Given concerns about traffic in communities, it is important to understand how the street design standards of a local subdivision ordinance might work. For example, the street design standards may require that the new subdivision include at least two connections with existing arterial or collector streets in the community. Street design standards might also require linkages to adjacent developments and neighborhoods with pedestrian and bicycle paths, where possible.

The *Wisconsin Statutes* require that, unless otherwise permitted by a local subdivision control ordinance or other local ordinance, no streets may be less than 60 feet wide.⁶⁷ Also, unless otherwise permitted by local ordinance, streets must be of the width specified on a community's master plan or official map. If there is no master plan or official map, the width must be as great as that of existing streets. Town roads must comply with the minimum design standards specified elsewhere in the *Statutes*.⁶⁸ If a community wants to vary from these standards, it

Guide to Community Planning in Wisconsin

is therefore important to explore the possibilities for the design of streets and specify standards in a local subdivision ordinance.

□ Configuration of blocks and lots. The ordinance may provide standards for the size and location of blocks and lots. The Wisconsin Supreme Court has upheld the right of a town to regulate minimum lot size through a subdivision ordinance even though the town was under a county zoning ordinance that also specified lot size.⁶⁹

In addition to regulating lot size, the ordinance should regulate the configuration of the lots so that all lots can be built upon unless some lots will be used for storm water retention or open space purposes. Lots should be oriented with the front of the building facing north or south to provide maximum solar access to reduce energy costs for future homeowners. Lots should also be configured to avoid driveways connecting to major arterial streets with heavy traffic. A cluster lot design may also be appropriate for preserving areas of environmental concern.

The *Wisconsin Statutes* specify a minimum lot size requirement under certain circumstances.⁷⁰ The statutes require that, in counties with populations of 40,000 or more, residential lots must have a minimum average width of 50 feet and a minimum area of 6,000 feet. In counties with populations of fewer than 40,000, residential lots must have a minimum average width of 60 feet and a minimum area of 7,200 square feet. By adopting a local subdivision ordinance, communities can adopt smaller minimum lot sizes for lots served by public sewers.

For lots next to lakes and streams, the *Wisconsin Statutes* provide that the land between the meander line and the water's edge and other unplattable land between a proposed subdivision and the water's edge shall be included as part of lots, outlots, or public dedications.⁷¹

□ Parks and open space. The ordinance may specify the amount and type of open space dedication required of new development and the location and dimensional standards for different

types of parks. For example, a community may determine that for every 500 people, it needs 10 acres of parks for the community park system. Based on the standards for the community's park system, one acre may be required for a neighborhood park that serves the immediate neighborhood, three acres may be required for a sub-community park that serves several neighborhoods, and six acres may be required as part of a large community park that serves the entire community.

□ Storm water management and construction site erosion control. The ordinance may identify methods for preserving natural drainage ways such as wetlands, floodplains, and shorelands, and standards for the construction of storm water management systems. The ordinance could also include practices and standards to minimize erosion during construction.

□ Waste water treatment. The ordinance may specify the size, material, and location of on-site waste water treatment systems (septic tanks, drain fields, etc.) or the specifications for connection to the public waste water treatment system.

The Wisconsin Court of Appeals upheld a town's rejection of a preliminary plat based on the town's ordinance that required public sewer service to all subdivisions.⁷² While the requirement of public sewers restricts the use of property, the court did not find it to be an illegal zoning ordinance.

□ Water systems. The ordinance may also include standards for the construction of water facilities (including wells in areas where public water supply facilities are not available) to insure adequate water supply for consumption and fire protection.

□ Lake and stream shore plats. The ordinance can specify standards to assist in maintaining lake and stream quality. The *Wisconsin Statutes* require that all subdivisions abutting a navigable lake or stream provide at least a sixty-foot-wide access to the low

Guide to Community Planning in Wisconsin

watermark from existing public roads at not more than one-half mile intervals (excluding shore areas where public parks or open-space streets are provided).⁷³

☐Trees and other vegetation. The ordinance can require the preservation of certain vegetation during construction and specify vegetation planting requirements. A community may specify specific native species of vegetation that must be planted and, for example, that trees shall have a minimum caliper of two-and-a-half to three inches and/or a minimum height of ten feet at time of planting.

☐Lighting. The ordinance may also specify requirements for street and other types of lighting. The specific requirements may relate to design specifications for lamp posts and specifications to minimize adverse impacts, such as glare and overhead sky glow, on adjacent properties.

Through these design standards, a community can effectively implement its plans and insure a pattern of development that will enhance the quality of the community. Additional design standards may be imposed by the person proposing the subdivision. However, the *Wisconsin Statutes* prohibit all restrictions on platted land that interfere with the development of the Ice Age Trail or that restrict the construction and operation of solar energy systems or wind energy systems.⁷⁴

Guide to Community Planning in Wisconsin

4. Financing Subdivision Improvements

The development of subdivisions places increased demands on local communities for the provision of capital facilities and public services. An essential part of the subdivision process is to decide how the cost of capital facilities, the need for which has been generated by the new growth, will be paid. Using general funding sources to pay for the cost of providing new facilities is more difficult. The dwindling of federal and state funds also makes the funding of new facilities more difficult. In addition, local communities are increasingly reluctant to impose higher property taxes on existing neighborhoods.

Local governments in Wisconsin have long had the authority to require that development contribute a larger share of the costs of public improvements it makes necessary. Tools used by local communities to shift part of the capital cost burden of development to the development itself, rather than the entire community, include: the requirement that developers install and dedicate certain capital improvements; the requirement that developers dedicate land or fees in lieu of land for parks, open space, or other public uses; impact fees; special assessments, and user fees. These tools are discussed below.

4.1 Required Improvements

The *Wisconsin Statutes* provide that as a condition of approving the preliminary or final plat, the governing body of a town, city or village “may require that the subdivider make and install any public improvements reasonably necessary or that the subdivider execute a surety bond or provide other security to ensure that he or she will make those improvements within a reasonable time.”⁷⁵

The sections of subdivision control ordinances that require developers to provide certain physical improvements and establish design standards for subdivision are probably the most important part of the subdivision process. These are the sections of the ordinance that impact on the future physical form of the community.

These sections can help maintain the existing character of a community and help develop a sense of place.

Subdivision regulations differ in the type of improvements required and the design standards that must be followed, depending upon many factors, such as the size of the community, the degree of urbanization that has taken place in the community, and the development policies adopted by the local community. Requirements that are appropriate for one type of subdivision may not be appropriate for another type. An industrial/commercial subdivision, for example, differs from a single family residential subdivision. Providing flexibility for subdivisions that require special treatment, such as planned unit developments or special facilities, may be necessary.

The following are examples of some improvements that are typically required from the developer of a new subdivision:

Monuments - the type, specification, and location of surveying monuments in the subdivision.⁷⁶

Storm water drainage facilities - the type of storm water drainage system necessary to serve the subdivision that may include storm sewers, ditches or culverts, curbs and gutters, catch basins, and other requirements.

Sanitary sewer facilities - the conditions under which a subdivider may connect to public sanitary sewerage facilities (where available), including the type and size of sanitary sewers. Where public sanitary sewer facilities are not available, the community may specify requirements for the placement, construction, and maintenance of private sanitary sewer facilities such as septic tanks.

Streets, alleys, and sidewalks - the type, width, and surface required for streets, alleys, and sidewalks.

Public utilities - the placement of public utilities such as phone, gas, and electric lines.

Guide to Community Planning in Wisconsin

□ **Water supply facilities** - the conditions under which a subdivider may be required to connect to public water supply, distribution facilities (where available), and other type, size, and installation requirements. Where public facilities are not available, the community may specify requirements for the provision of adequate private water wells according to local circumstances and the standards of the Wisconsin Department of Health and Social Services. Requirements may relate to the placement of wells in relation to sanitary sewer facilities, such as septic tanks, and the periodic testing of wells.

□ **Street lighting** - the type of street lighting required mainly for purposes of public safety. Also, the type of outside lighting allowed for commercial and residential purposes.

□ **Street signs** - the type and placement of street signs.

□ **Street trees** - the type, size, and location of trees and shrubs to be planted along streets, bikeways, and sidewalks.

□ **Sediment control** - vegetation and grading requirements necessary to prevent soil erosion and sedimentation.

The *Wisconsin Statutes* also provide that a county, town, city, or village may also require that the subdivider pay “the cost of any necessary alterations of any existing utilities that, by virtue of the platting or certified survey, may, fall within the public right-of-way.”⁷⁷

4.2 Financial Guarantees for Completion and Maintenance of Improvements

A potential problem for local communities is how to ensure that the developer will provide all the improvements after the proposed subdivision has been approved. There are several ways to ensure that the needed improvements will be provided and that the local community will not be required to provide the improvements at a later date. These include **subdivision improvement agreements or development agreements** between the developer and the local community that may detail such things as the improvements to be made and the

time line for completion; **letters of credit** provided by a lender to insure the necessary finances will be available; **escrow** in cash, stocks, bonds, or title to real property held in trust by a bank or the local community; or **performance bonds** obtained from a surety company in an amount equal to the estimated cost of improvements. These different forms of financial assurances also need to address subdivisions that are built in phases over a period of years.

Long term maintenance of common improvements not the responsibility of the public also needs to be addressed. These improvements may include a private road or common green space as part of a cluster development. Typically, these maintenance issues are addressed with the creation of a homeowners’ or community association.

4.3 Dedication of Land or Fees in Lieu of Dedication

As part of the required improvements in a subdivision control ordinance, communities will often specify the requirements for the **dedication of parks, open space, or sites for other public uses**. Dedication is appropriate where a subdivision contains suitable land for the public facility needed, such as a park or a school site. Dedication is least desirable for off-site facilities.

Fees in lieu of dedication are valuable when the subdivision is too small and there is insufficient land to dedicate for the facility needed; where the land available is not well suited for the facility because of location or topography; or where the local government’s plans show a need for the facility at a different location outside the boundaries of the particular subdivision.

The *Wisconsin Statutes* provide that a city or village “may require as a condition for accepting the dedication of public streets, alleys or other ways, or for permitting private streets, alleys or other public ways to be placed on the official map, that designated facilities shall have been previously provided without cost to the municipality . . . such as . . . sewerage, water mains and laterals, grading and improvement of streets, alleys, sidewalks and other public ways, street lighting or other facilities designated by the

Guide to Community Planning in Wisconsin

governing body, or that a specified portion of such costs shall be paid in advance. . . .”⁷⁸

A county, town, city, or village may also “require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar energy across adjacent lots in the subdivision.”⁷⁹

4.4 Impact Fees⁸⁰

Since May 1, 1995, a political subdivision seeking to impose and collect impact fees must comply with the requirements of the *Wisconsin Statutes*.⁸¹ Impact fees are an appropriate mechanism for financing off-site improvements where dedication and fees in lieu may not be appropriate. “Impact fees” are defined as “cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a political subdivision under this section.”⁸² Impact fees may be used by cities, villages, towns, or counties.⁸³

4.4.1 Types of Facilities for Which Impact Fees May be Used

Impact fees may be used to finance the capital costs of constructing highways and other transportation facilities, sewage treatment facilities, storm and surface water handling facilities, water facilities, parks and other recreational facilities, solid waste and recycling facilities, fire and police facilities, emergency medical facilities, and libraries.⁸⁴ The law expressly prohibits the use of impact fees to finance facilities owned by a school district.⁸⁵ Counties cannot use impact fees to fund highways and other transportation related facilities.

4.4.2 Procedure for Establishing Impact Fees

A political subdivision must prepare a **needs assessment** for the public facilities that the political subdivision anticipates imposing impact fees.⁸⁶ The needs assessment is critical to establishing the rational relationship that the impact fee must bear to the need for new, expanded or improved public facilities required to serve land development.⁸⁷ The needs assessment should also insure that the impact fees do not

exceed the proportionate share of the capital costs required to serve land development, as compared to existing uses of land within the political subdivision.⁸⁸

Following completion of the needs assessment, the next step in the impact fee process elaborated in the statute is the enactment of an **impact fee ordinance**.

4.5 Legal Standards for Impact Fees, Dedications, and Fees-in-Lieu

The Wisconsin Supreme Court very early approved the use of dedications and fees in lieu of dedication against constitutional challenge.⁸⁹ The court applied a “test of reasonableness” to evaluate the conditions imposed on development that recognizes the cumulative impacts of development:

*In most instances it would be impossible for the municipality to prove that the land required to be dedicated for a park or school site was to meet a need solely attributable to the anticipated influx of people into the community to occupy this particular subdivision. On the other hand, the municipality might well be able to establish that a group of subdivisions approved over a period of several years had been responsible for bringing into the community a considerable number of people making it necessary that the land dedications required of the subdividers be utilized for school, park and recreational purposes for the benefit of such influx.*⁹⁰

The court's “reasonable connection” standard is viewed as an early case in the development of the “reasonable nexus” test that has developed today as the standard for evaluating the constitutionality of programs that require that new development pay the costs associated with that development.

Recent decisions by the U.S. Supreme Court have also accepted exactions as a valid means of financing infrastructure. According to the Court, to withstand a challenge to an exaction as a “taking,” the type of condition imposed must

Guide to Community Planning in Wisconsin

address the same type of impact caused by the development.⁹¹ In addition, the “required degree of connection between the exactions and the projected impact of the proposed development” must be one of “rough proportionality.”⁹²

The key to the validity of an exaction is the nexus between the exaction and the need created by the development. If a proposed development creates the need for additional parkland, then requiring that a subdivider provide parkland is appropriate for the local community. However, the amount of parkland required of the subdivider must be roughly proportional to the demand created by the new subdivision. A community cannot justify asking for 10 acres of parkland if the demand generated by a new subdivision only justify 3 acres of new parkland.

According to the U.S. Supreme Court, the tests for upholding exactions do not require a precise mathematical calculation. Nevertheless, a community must make some sort of “individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.”

4.6 Special Assessments

Special assessments are a tool that local governments have commonly used in Wisconsin since the late 19th century for financing public facilities. Special assessments are important because, unlike impact fees, special assessments can be applied to existing development and can be used to fund existing deficiencies.

Special assessments are not considered exactions because they are not imposed on developers as a condition of development. Under Wisconsin law, “any city, town or village may, by resolution of its governing body, levy and collect special assessments upon property in a limited and determinable area for special benefits conferred upon such property by any municipal work or improvement; and may provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of such special assessments.”⁹³

Special assessments differ from ad valorem taxes in that the law of special

assessments requires that a determinable benefit must be conferred upon the properties in the special assessment district.⁹⁴ An assessment differs from a general tax, however, in that it is imposed to pay for an improvement that benefits a specific property within the political subdivision imposing it. For that reason an assessment is always made against the land in proportion as it enhances the value of that land, and it fixes a lien on the land.⁹⁵

Because of the need to show special benefit to property caused by the improvement, special assessments are traditionally used to fund improvements abutting the land that is ultimately assessed for such capital expenditures as sewer and water mains, sidewalks, street paving, and curbs and gutters. The construction of “off site” improvements are seen as generally benefiting the entire community rather than a specific area and therefore must be financed by other means.

4.7 User Fees

User fees, such as charging an annual or daily fee to use the community swimming pool, are another way in which to help finance public facilities.

More communities are realizing the importance of subdivision regulations. The above information only provides a very general overview of the possibilities for using subdivision regulations. As communities engage in this work, remember:

Recent U.S. Supreme Court decisions and the 1994 impact fee enabling legislation in Wisconsin should make communities revisit the criteria for dedications and fees in lieu.

If the pattern of development in the community is not desirable, revise the subdivision ordinance.

Use graphics, tables, and charts. Also, reference related codes that may affect the subdivision process, such as zoning regulations, traffic codes, etc., and community plans.

Guide to Community Planning in Wisconsin

5. Resource Materials

Wisconsin Platting Manual, compiled by the Plat Review Unit of the Wisconsin Department of Administration (1995).

Model Subdivision Regulations, by Robert H. Freilich and Michael M. Shultz (American Planning Association Planners Press, 1995).

The Subdivision and Site Plan Handbook, by David Listokin and Carole Walker, (Center for Urban Policy Research, 1989).

Visions for a New American Dream, by Anton Clarence Nelessen (American Planning Association Planners Press, 1994).

Land Division Ordinance for the Village of Any town, Anywhere County Wisconsin, by Southeastern Wisconsin Regional Planning Commission (1995).

IMPACT FEES

Impact Fee Handbook, by the National Association of Home Builders (Home Builder Press, 1997).

A Practitioner's Guide to Development Impact Fees by James C. Nicholas, Arthur C. Nelson, and Julian C. Jurgensmeyer (American Planning Association Planners Press, 1991).

Guide to Community Planning in Wisconsin

6. Endnotes

1. Cunningham, "Land Use Control," 50 **Iowa Law Review** 24 (1965).
2. See Marygold Shire Melli, "Subdivision Control in Wisconsin," **Wisconsin Law Review**, vol. 1953, pp. 389-457, outlining the history of subdivision control in Wisconsin and the reasons which lead to the need for the 1955 law.
3. Wis. Stat. § 236.45.
4. Wis. Stat. § 236.03(1).
5. As instrumentalities of the state, the county register of deeds offices keep a record of the lots which are created as the result of the division of an existing parcel.
6. within three miles of the boundaries of a second or third class city or within one and one-half miles of a fourth class city or village.
7. The extraterritorial plat approval jurisdiction of the city or village is dependant upon the city or village having adopted a subdivision ordinance or official map.
8. Wis. Stat. § 236.13(4).
9. State law defines a "subdivision" as: "a division of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where: (a) The act of division creates 5 or more parcels or building sites of 1½ acres each or less in area; or (b) Five or more parcels or building sites of 1½ acres each or less in area are created by successive divisions within a period of five years." Wis. Stat. § 236.02(12).
10. Wis. Stat. § 236.02(12).
11. Wis. Stat. § 236.12(2)(a).
12. Wis. Stat. § 236.12(2)(a); Wis. Stat. § 236.13(1)(d); and Wis. Stat. § 236.13(2m).
13. Wis. Stat. § 236.12(2)(a) and Wis. Stat. § 236.13(1)(e).
14. Wis Stat. § 236.13(2m).
15. Wis. Stat. § 236.12(3).
16. Wis. Stat. § 236.34.
17. Wis. Stat. § 236.10(1)(a).
18. In order for the county planning agency to exercise its approval authority it must employ on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation. Wis. Stat. § 236.10(1)(b)3.
19. In order for a city or village to exercise its extraterritorial authority, it must have a subdivision ordinance or an official map. Wis. Stat. § 236.10(1)(b)2. A city or village may waive its right to approve plats within any portion of its extraterritorial plat approval jurisdiction by a resolution of the city council or village board which is recorded with the county register of deeds. The resolution must incorporate a map or metes and bounds description of the area outside its corporate boundaries within which it will approve plats. The waiver may be rescinded at any time by resolution of the city council or village board. Wis. Stat. § 236.10(5).
20. Wis. Stat. § 236.10(1)(c).
21. Wis. Stat. § 236.13(4).

Guide to Community Planning in Wisconsin

22. Wis. Stat. § 236.10(3). However, final plats dedicating streets, highways or other lands must be approved by the governing body.
23. Wis Stat. § 236.13(1).
24. Wis. Stat. § 236.13. See *State ex. rel. Columbia Corp. v. Town Board of Pacific*, 92 Wis. 2d 767, 286 N.W. 2d 130 (Ct. App. 1979).
25. Wis. Stat. § 236.12(2)(a).
26. *Pederson v. Town of Windsor*, 191 Wis.2d 664, 530 N.W.2d 427 (Ct. App. 1995) citing *Rice v. City of Oshkosh*, 148 Wis.2d 78, 435 N.W.2d 252 (1989).
27. Wis Stat. § 236.13(2)(b).
28. Wis Stat. § 236.13(2)(c).
29. Wis Stat. § 236.13(2)(d).
30. See *State ex rel. Columbia Corp. v. Town of Pacific*, 92 Wis.2d 767, 286 N.W.2d 130 (Ct. App. 1979).
31. For cities, villages, and towns with village powers, the planning agency is the plan commission. A county planning agency is defined as "a rural county planning agency authorized by s. 27.019, a county park commission authorized by s. 27.02 except that in a county with a county executive or county administrator, the county park manager appointed under s. 27.03(2), a county zoning agency authorized by s. 59.69 or any agency created by the county board and authorized by statute to plan land use." Wis. Stat. § 236.02(3). For towns not exercising village powers, a planning agency can also mean a town zoning committee appointed for the exercise of town zoning authority under section 60.61(a) of the *Wisconsin Statutes*. Wis. Stat. § 236.02(13).
32. Wis. Stat. § 236.45.
33. Wis. Stat. § 236.45(4).
34. *State ex rel Columbia Corp. v. Pacific Town Board*, 92 Wis.2d 767, 286 N.W.2d 130 (Ct. App. 1979) (without a zoning or subdivision ordinance, a community has no authority to reject a plat if it complies with the requirements of Chapter 236).
35. Wis. Stat. §236.45(2).
36. 207 Wis. 2d 156, 58 N.W.2d 100 (1997).
37. Pursuant to Wis. Stat. § 236.10(3), the Mequon city council delegated its authority to review plats for subdivisions to the plan commission. In its opinion, the Supreme Court stated that its decision applies equally to communities whose governing body has retained plat approval authority.
38. A "county planning agency" is defined as "a rural county planning agency authorized by s. 27.019, a county park commission authorized by s. 27.02 except that in a county with a county executive or county administrator, the county park manager appointed under s. 27.03(2), a county zoning agency authorized by s. 59.69 or any agency created by the county board and authorized by statute to plan land use." Wis. Stat. § 236.02(3). For counties to exercise approval authority in the extraterritorial jurisdiction of a city or village, the county planning agency must also employ "on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation." Wis. Stat. § 236.10(1)(b)3.
39. Wis. Stat. § 236.13(4).
40. The Wisconsin Court of Appeals took note of this distinction in *Reynolds v. Waukesha County Park & Plan. Comm.*, 109 Wis.2d 56, 324 N.W.2d 897 (Ct. App. 1982), where the court noted that Wisconsin' platting law creates "an exception to the general rule that incorporated areas within a county are not subject to control by county government."

Guide to Community Planning in Wisconsin

If a county does not have a planning agency, the county park commission (or the county park manager in counties with a county executive or administrator) may determine if there is an objection with proposed subdivisions which abut a county park or parkway on the basis of a conflict with the park or parkway development. Wis. Stat. § 236.12(2)(b).

41. According to the *Reynolds v. Waukesha County Park & Plan. Comm.* case, a "planned public development" must be included in a plan that a county has adopted by ordinance.
42. Wis. Stat. § 236.12(3).
43. Wis. Stat. § 62.23(7a)(c).
44. Wis. Stat. § 236.10(1)(b)2.
45. Wis. Stat. § 236.10(5).
46. Melli & Devoy, "Extraterritorial Planning and Urban Growth," **Wisconsin Law Review**, vol. 1959, p. 55, at p. 56.
47. Wis. Stat. § 236.13(4).
48. Wis. Stat. § 236.10(2) and Wis. Stat. § 66.32.
49. *Brookhill Development, Ltd. v. City of Waukesha*, 103 Wis.2d 27, 307 N.W.2d 242 (1981).
50. *Rice v. City of Oshkosh*, 148 Wis.2d 78, 435 N.W.2d 252 (1989).
51. *Hoepker v. City of Madison*, 209 Wis.2d 633, 563 N.W.2d 145 (1997).
52. *Gordie Boucher Lincoln-Mercury Madison, Inc. v. City of Madison Plan Commission*, 178 Wis.2d 74, 503 N.W.2d 265 (Ct. App. 1993) (proposed use as an automobile dealership was inconsistent with plans for area to be used for open space).
53. *Busse v. City of Madison*, 177 Wis.2d 808, 503 N.W.2d 340 (1993), review denied 510 N.W.2d 136. The City's ordinance read: "No land shall be subdivided which is held by the City Plan Commission to be unsuitable for use by reason of flooding, bad drainage, soil or rock formations with severe limitations for development, severe erosion potential, or unfavorable topography, or any other feature likely to be harmful to health, safety or welfare of future residents or landowners in the proposed subdivision or of the community."
54. See Wis. Stat. § 703.37: "For purposes of interpretation of this chapter [Condominiums], a condominium is not a subdivision as defined in ch. 236."
55. Wis. Stat. § 703.27(1).
56. Wis. Stat. § 236.45(1).
57. See, e.g., *Pederson v. Town of Windsor*, 191 Wis.2d 664, 530 N.W.2d 427 (Ct. App. 1995), in which the court held that the town could not require through its ordinance that a subdivider prepare a public sewage facilities plan for a drainage basis that extends beyond the borders of the community but the town could require the plan for the area within its borders. The town could not require a water facilities plan because it was inconsistent with the requirements of the town's subdivision ordinance.
58. Wis. Stat. § 236.11(1)(a). See *State ex rel Lozoff v. Board of Trustees*, 55 Wis.2d 64, 197 N.W.2d 798 (1972) (tabling of action is not sufficient).
59. Wis. Stat. § 236.12(3).
60. Wis. Stat. § 236.20.
61. Wis. Stat. § 236.21.

Guide to Community Planning in Wisconsin

62. Wis. Stat. § 236.11(1)(b).
63. Wis. Stat. § 236.11(2). However, even if a final plat is approved by failure to act within the 60 day period, the land is not automatically available for its intended use unless it is also properly zoned and conforms with other local ordinances. *State ex rel. James L. Kallan, Inc. v. Barg*, 3 Wis. 2d 488, 89 N.W.2d 267 (1958).
64. Wis. Stat. § 236.13(5).
65. Wis. Stat. §§ 236.36 - 236.42.
66. See *Busse v. City of Madison*, 177 Wis.2d 808, 503 N.W.2d 340 (Ct. App. 1993), review denied 510 N.W.2d 136.
67. Wis. Stat. § 236.16(2).
68. Wis. Stat. § 86.26.
69. *Town of Sun Prairie v. Storms*, 110 Wis.2d 58, 327 N.W.2d 642 (1983).
70. Wis. Stat. § 236.16(1).
71. Wis. Stat. § 236.16(4).
72. *Manthe v. Town of Windsor*, 204 Wis.2d 546, 555 N.W.2d 167 (Ct. App. 1996).
73. Wis. Stat. § 236.16(3).
74. Wis. Stat. § 236.292.
75. Wis. Stat. § 236.13(2)(a).
76. Often the monumenting requirements follow the requirements of Wis. Stat. § 236.15.
77. Wis. Stat. § 236.13(2)(c).
78. Wis. Stat. § 236.13(2)(b).
79. Wis. Stat. § 236.13(2)(d).
80. Wis. Stat. § 66.55. While impact fees often arise in the context of proposed subdivisions, impact fees can be used in the context of any new development, such as a major retail establishment built on the edge of a community.
81. Wis. Stat. § 66.55(2)(c).
82. Wis. Stat. § 66.55(1)(c).
83. Wis. Stats. § 66.55(1)(e).
84. Wis. Stat. § 66.55(1)(f).
85. *Id.*
86. Wis. Stat. § 66.55(4)(a).
87. Wis. Stat. § 66.55(6)(a).
88. Wis. Stat. § 66.55(6)(b).
89. *Jordan v. Village of Menomonee Falls*, 28 Wis.2d 608, 127 N.W.2d 442 (1966).
90. *Id.* at 447.
91. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

Guide to Community Planning in Wisconsin

92. *Dolan v. City of Tigard*, 512 U.S. 374 (1994).
93. Wis. Stats. § 66.60(1)(a).
94. *Hale v. City of Kenosha*, 29 Wis. 599, 605 (1872).
95. *City of De Pere v. Public Serv. Comm'n*, 266 Wis. 319, 327, 63 N.W.2d 764, 769 (1954).

Chapter 8

INTERGOVERNMENTAL ISSUES

Chapter 8

- 1. Annexation**
- 2. Intergovernmental Agreements**
- 3. Incorporation**
- 4. Relationship of Local Planning to State and Federal Lands and Laws**
- 5. Indian Nations**
- 6. Alternative Dispute Resolution**
- 7. Endnotes**

This chapter explores a variety of intergovernmental issues. Intergovernmental issues, or how one unit of government relates to another, can take various forms. For example, intergovernmental issues can arise in the context of one community cooperating with another in the sharing of public services, such as a joint police or fire department.

Another intergovernmental issue concerns the applicability of one local community's plans and land use controls to territory in of another community. This may involve the extraterritorial application of a city or village's land use ordinances to town land. The extraterritorial application of city and village master planning authority, zoning, authority, and subdivision authority is discussed elsewhere in this Guide.¹

A related intergovernmental issue involves adjustments to territory through the use of annexation, cooperative boundary agreements, and incorporation. Annexation of town land by cities and villages is often a contentious process. Cooperation with the town on the subject will minimize future extraterritorial conflicts.

Annexation and cooperative boundary agreements are discussed below. The process of incorporation, or how unincorporated territory becomes a city or village, is also explored below.

Additional intergovernmental issues may also arise for local communities regarding the applicability of local plans and land use controls to land owned by other governments, such as the state or federal government or the sovereign Indian Nations in Wisconsin. The converse of this intergovernmental issue involves the relationship of state and federal laws to local land use ordinances. These issues are also explored below.

1. Annexation

Annexation is the statutory process for transferring lands from unincorporated areas (towns) to incorporated areas (cities and villages). The *Wisconsin Statutes* outline several annexation processes.² These processes usually involve four entities: (1) property owners (both public and private owners); (2) a town and possibly a county, in some circumstances; (3) a city or village; and (4), in counties with a population of 50,000 or more persons (currently 24 out of 72 counties), an advisory public interest review by the Municipal Boundary Review Section (MBR) of the Department of Administration. When so requested, the MBR will review annexation petitions received from municipalities located within smaller counties. The MBR reviews about 400 annexation petitions a year.

In Wisconsin, annexations are typically designed and initiated by landowners, and not by villages or cities. Landowners can petition a city

Guide to Community Planning in Wisconsin

or village to have their land annexed. Landowners can shop around for the best deal on public services and regulations, including bringing in unwilling land owners.

Cities and villages can only accept or reject the petition. As a result, cities and villages often have to rely upon incremental annexation to address local needs. This may result in oddly shaped municipal boundaries and can frustrate the best planning efforts by cities, villages, and towns when they are not working cooperatively to address annexation issues. Annexations do not automatically result in a change in school district attendance areas, school district boundaries, and urban service area boundaries.

1.1 Types of Annexation

There are several different methods by which annexation may occur.

1.1.1 Unanimous Approval

The most common form of annexation involves direct annexation by unanimous approval.³ This type of annexation involves a single property owner or group of property owners who decide to have property they own in a town annexed to a city or village for sewer or other municipal services not available in the town, or for other reasons.

This type of annexation begins with a petition signed by all of the electors residing in the territory and the owners of all of the real property included within the territory to be annexed. The petitioners must submit the signed annexation petition to the clerks of each city, village, and town affected by the annexation, as well as the school district.

If the annexation is within a county with a population of 50,000 or more, the petitioner must, within five days of sending the petition to the local clerks, send a copy of the petition, a scale map, and legal description of the territory to be annexed to the MBR for an advisory review. The city or village must review the advice of the MBR, if any, before enacting an annexation ordinance. The city council or village board adopts an annexation ordinance by two-thirds vote.

1.1.2 Direct Annexation

The next most common form of annexation, though used far less frequently than the unanimous approval petition, is direct annexation. A direct annexation begins by electors⁴ and property owners publishing a class 1 notice,⁵ of “intention to circulate an annexation petition” in a newspaper with general circulation in the territory proposed for annexation.

The “notice of intent to circulate”⁶ petition must be signed by a majority of electors in the territory who cast votes for governor in the last gubernatorial election, and either the owners of one-half the real property in value or in land area. If no electors reside in the territory, then the owners of either one-half the real property in value or land area in the territory must sign the petition.

The “notice of intent to circulate petition” must be sent, within five days of publication to: the clerk of each municipality affected, each school district affected, and each owner of land within the territory proposed for annexation. If the municipality is within a county with a population of 50,000 or more persons, the notice, a legal description, and a scale map of the proposed annexation must be mailed, within five days after publication, to the MBR. The annexing city or village must review the MBR’s advice before accepting or rejecting the annexation.

If there are electors in the territory who do not wish to be annexed, the electors may challenge the annexation by petitioning for a referendum to be held in the area proposed for annexation. Opposing electors may prevail because of the small percentage of electors required to sign the petition.

1.1.3 Annexation By Referendum

The annexation by referendum method⁷ of annexation is rarely used. It is meant to provide an open process for annexation. The method begins with a referendum on the issue of annexation. The petition for a referendum is filed with a village or city. The petition must be signed by at least 20 percent of the electors in the territory who cast votes in the last gubernatorial election. The referendum is voted upon by the electors of the town. The success or failure of the

Guide to Community Planning in Wisconsin

referendum determines whether the annexation process should proceed.

1.1.4 Annexation of Owned Territory

Land owned by a city or village may be annexed to the city or village by an ordinance adopted by the governing body of the city or village.⁸ The land does not have to be contiguous to the city or village to be annexed. However, if the land is not contiguous, it may be annexed under this provision only if the use of the land is not contrary to any town or county zoning ordinance. Also, no privately owned parcels may be subsequently attached to the annexed city-owned parcel.

1.1.5 Annexation by Court-Ordered Referendum

An annexation by court-ordered referendum allows a city or village to initiate an annexation proceeding by asking the circuit court to order a referendum on the question of annexation.⁹ This process is seldom used.

1.2 The Petition

The three most common methods-- unanimous approval, direct annexations, and annexation by referendum--involve the use of a petition submitted by some combination of landowners and/or electors. While the statutes do not specify the exact form of an annexation petition,¹⁰ the MBR requires that petitions contain the following information:

1. A statement of purpose
2. The name of the city or village to which annexation is proposed.
3. The name of the town or towns from which the territory is proposed to be detached.
4. A legal description of the territory proposed to be annexed.
5. A scale map that accurately reflects the legal description of the property to be annexed. The map must show the boundary of the annexing city or village, and its relation to the boundary of the territory proposed for annexation.
6. A graphic scale shall appear on the

map face.

7. The population of the territory to be annexed must be specified.

1.3 Annexation Maps

Because state agencies use annexation maps for various purposes, they need to be sufficiently accurate so as to enable state and local agencies to properly determine whether highway and road right-of-way, wetlands, floodplains, etc., may be included or excluded by the proposed annexation. Although certified survey maps and subdivision plats are not required by statute, they nevertheless offer the most assurance that the necessary information will be portrayed.

1.4 Review of Municipal Annexations by the State

Only municipal annexation petitions filed in counties having a population of 50,000 or more require review by the MBR in the Department of Administration. This involves a 20-day review and follows the criteria outlined in the *Wisconsin Statutes*.¹¹ The review is advisory. Nevertheless, the advice of the MBR must be considered by the annexing municipality before passing an annexation ordinance. The criteria used by the MBR are:

(1) Whether governmental services, including zoning, to be supplied to the territory could clearly be better supplied by the town or by some other village or city whose boundaries are contiguous to the territory proposed for annexation;

(2) The shape of the proposed annexation and the homogeneity of the territory with the annexing municipality and any other contiguous city or village.

(3) “[C]onsideration of the objectives recognized by the legislature---to prevent haphazard, unrealistic and competitive expansion of municipalities which disregards the overall public interest.”¹²

Annexations submitted to the MBR for

Guide to Community Planning in Wisconsin

review are assigned a number and entered into a computer data base. The petition is copied and sent to the clerks of the annexing municipality and the town, along with a cover letter containing basic questions pertaining to the state's review. All parties have 10 days to respond with any issues or concerns, in order for the state to complete its review within the allotted 20 days.

In complex circumstances and with the consent of the parties, the MBR may request additional processing time and information, or suggest other remedies, including mediation and alternative dispute resolution.

1.5 Filing with the Office of the Secretary of State

Upon adoption of an annexation ordinance by a city or village, the clerk must immediately file a certified copy of the annexation ordinance with the Office of the Secretary of State.¹³ Failure to file an ordinance with the Secretary of State may reduce state and federal aids based on population, equalized value, and road mileage.

State and federal agencies rely on copies of annexations sent to the Office of the Secretary of State for critical information. For example, failure to file an annexation means that the Wisconsin Department of Transportation will be unaware of the municipality's new territory. Therefore, any present or future road mileage within the annexed territory would not be included when local transportation aids are calculated. This may mean a loss of transportation aid for this municipality and, a loss of state shared revenue, and may potentially create other jurisdictional problems.¹⁴

1.6 Other Annexation Issues

Land annexed must be contiguous to the annexing city or village, unless a municipality is annexing city or village owned lands. Some significant degree of contact between the city or village and the territory to be annexed is necessary.¹⁵

Since December 2, 1973, cities and

villages have been prohibited from creating a town area which is completely surrounded by the city or village (also known as a "town island").¹⁶ So long as 2 or more separate jurisdictions (the annexing municipality and another town, city, or village) touch remaining town lands, no town island is created.

There is also a relationship between annexations and incorporations. The publication of a "notice of intent to incorporate territory" can effectively halt annexations from town territory until the incorporation matter is resolved.¹⁷

Finally, county shoreland, erosion control, and stormwater management ordinances and town erosion control and stormwater management ordinances in effect prior to annexation remain in force until a city or village enacts an ordinance at least as restrictive as the regulation in effect at the time of annexation or incorporation.¹⁸

Guide to Community Planning in Wisconsin

2. Intergovernmental Agreements

Annexations often provide the trigger for lengthy and expensive legal struggles between competing community land use visions, and for tax base and community identity. A more constructive approach may be to explore intergovernmental agreements.

Wisconsin has a number of different statutory methods enabling intergovernmental cooperation. The methods of intergovernmental cooperation available to address annexation-related issues include: general intergovernmental agreements;¹⁹ municipal boundaries fixed by court judgment;²⁰ boundary change by cooperative plan and agreement;²¹ and revenue sharing agreements.²²

There is no one best way to encourage cooperation. One or more of these methods for cooperation may be better suited to particular types of local government issues than the others.

Cooperative agreements can play an important role in shaping how elected officials view the type, scale, and intensity of land use development and retention/redevelopment opportunities available to their communities, and how these opportunities might be realized, particularly when the participation, or at least consent, of neighboring towns, cities, and villages may be required.

Cooperative agreements can also encourage communities to embrace a broader vision, compatible with neighboring visions, and capable of addressing complex natural resource, economic development, and social equity issues that historically transcend municipal boundaries.

Despite the advantages offered by cooperative agreements, some communities are not yet ready to consider complex intergovernmental agreements involving comprehensive land use planning and tax revenue sharing. For these communities, continued incremental intergovernmental struggles through annexation, incorporation, and the courts will inevitably occur, until they and their neighbors can evolve a more compatible understanding of their circumstances.

By enabling intergovernmental agreements, the Legislature has given communities tools which can interrupt the historic conflict often triggered by the annexation/incorporation processes, by providing towns, cities, and villages the authority to define their particular roles and responsibilities so as to lead to long-term stability.

2.1 Forms of Cooperative Agreements

The *Wisconsin Statutes* authorize communities to use at least three different types of intergovernmental or cooperative agreements. The distinction between these different forms of agreements is highlighted below and in Table 1. Table 1 also compares the different agreements to the alternative of annexation.

2.1.1 General Intergovernmental Agreements

General intergovernmental agreements are the most common form of agreement used by communities.²³ These agreements have been used by communities for years, often in the context of sharing public services such as police, fire, etc. These agreements can be used by the state, cities, villages, towns, counties, regional planning commissions, and certain special districts, including school districts, public library systems, public inland lake protection and rehabilitation districts, sanitary districts, farm drainage districts, metropolitan sewerage districts, and sewer utility districts, among others. The agreements can also be used with Indian tribes or bands.

This type of agreement can be used to set temporary municipal boundaries and provide for revenue sharing. In so doing, the statutes do not require planning as a component of the agreement. The normal annexation process, however, will have to be relied on to accomplish boundary changes. The agreement is not subject to approval of state or contiguous local governing bodies.

Guide to Community Planning in Wisconsin

2.1.2 Boundaries Set by Judicial Decree

These agreements are used to settle annexation disputes by mutual agreement of the parties.²⁴ This process also does not require planning. The process allows for a referendum election upon request of any electors present. Other than involving the state courts, this agreement is not subject to approval of state or contiguous local governing bodies but may involve subsequent annexation petitions to carry out the agreement.

2.1.3 Boundary Change by Cooperative Plan

Boundary changes by cooperative plan and agreement²⁵ is a newer cooperative agreement tool developed by the Legislature. It involves a plan and agreement for maintaining or changing municipal boundaries for a period of 10 or more years.

It requires integrated and detailed land use planning as well as review and approval by the state through the Department of Administration. Each city, village, or town that intends to participate in the preparation of a cooperative plan must adopt a resolution authorizing its participation in the planning process. Notice of the resolution must be given to a number of state agencies, other municipalities, certain special districts such as school districts, the county zoning agency, and the regional planning commission.²⁶

The planning required can be complex, time-consuming, and expensive. Nevertheless, the plan and agreement provide long term certainty for all participating local governments, developers, and landowners. If boundaries are going to change, they will do so only according to the criteria specified in the agreement.

Among other things, the cooperative plan must include a plan for the physical development of the territory covered by the plan; identify existing boundaries that will not change and conditions for any boundary changes; evaluate any significant adverse environmental consequences; and address the need for safe and affordable housing to meet the needs of diverse social and income groups in each community.²⁷

Within the geographic area covered by the cooperative agreement, land use plans adopted by towns, cities, and villages have a greater potential for realization because plan/agreement implementation mechanisms must be spelled out and shown to be feasible. In addition, if a town is party to a cooperative plan with a city or village, the town can exercise zoning authority under the plan without the approval of the county as is usually required for town zoning.²⁸

The participating communities to the plan must hold a public hearing on the plan. If a petition opposing the plan is signed by at least 10 percent of the qualified electors in the community, the plan may not be adopted unless approved by three-fourths of the members of the community's governing body.²⁹ An advisory referendum involving the electorate of an entire community may also be held on the plan.³⁰ The cooperative plan is then forwarded to the Municipal Boundary Review Section of the Department of Administration for review in accordance with the requirements of the *Wisconsin Statutes*. Once approved by the Department, provisions in the plan to maintain existing boundaries, the schedule for changes to boundaries, and plans for delivery of services are binding on the parties and have the force and effect of a contract.³¹ No other procedure to alter municipal boundaries can be used within the territory covered by the plan during the period covered by the plan.³²

2.1.4 Municipal Revenue Sharing

Cities, villages, and towns also have express authority to enter into cooperative agreements to share all or part of the revenues derived from taxes and special charges within a specified area.³³ At least one of the communities needs to have contiguous boundaries. The revenue sharing agreement may be used in conjunction with other intergovernmental cooperative agreements such as agreements to share services and agreements to change boundaries set by judicial decree or by cooperative plans.

To adopt a revenue sharing agreement, each community must hold a public hearing at

Guide to Community Planning in Wisconsin

least 30 days prior to the adoption. Within 30 days after the public hearing the public may demand an advisory referendum on the plan. A majority of the governing body of each community must then vote in favor of the agreement.

The agreement must last for a period of at least 10 years.³⁴ The agreement must also specify the means of determining the amount of revenue to be shared under the agreement. The various fiscal impact formulas discussed in Chapter 4 provide different ways of calculating these amounts.

Guide to Community Planning in Wisconsin

Table 1. Comparison between different processes to change municipal borders

	Annexation ³⁵	Cooperative Agreements ³⁶	Stipulation & Order ³⁷	General Agreements ³⁸
Landowner initiates?	Yes	No	No	Through political process
Town participates in decision?	No	Yes	Yes	May be ignored
Who reviews?	City or village (and DOA in counties of 50,000 or more)	DOA, with comments from county planning agency and/or RPC	Circuit court	Municipalities who are parties to the agreement
Who decides?	City or village	All affected municipalities and DOA	Circuit court by stipulation and order	Municipalities who are parties to the agreement
Appealable action?	Yes, by town	yes, Chapter 227	No apparent 3rd party appeal provisions	No appeal procedure provided
Possible binding referendum?	Yes	No, advisory only	Yes	None provided, could be considered as a charter ordinance referendum
Permanent?	Yes, unless city or village receives petition requesting detachment and receiving municipality concurs	Yes, period fixed by participants, may be amended upon request, following review and approval by DOA	Yes, so long as any party is willing to seek enforcement of the agreement	Generally for the term of the contract subject to subsequent elected boards and councils
Easily accomplished?	Yes, but could trigger litigation	No (1/2 year or more to prepare)	Requires cause of action and subsequent litigation	Yes
Type of process	Incremental	Comprehensive	Incremental	Incremental
Involves planning	No	Yes	Maybe	Maybe
Protection for town and affected landowners	No (except referendum election may be required)	Yes	Maybe	Maybe
Involves service sharing	No	Yes	Maybe	Maybe
Protection for extending municipal sewer and water to towns	No	Yes (untested)	No	Questionable
Prevents subsequent annexations?	No	Yes, for territory contained within the cooperative agreement	May require subsequent judicial interpretation	Possible

Guide to Community Planning in Wisconsin

3. Incorporation

Municipal incorporation--the process of creating new villages and cities from town territory--is regulated by the *Wisconsin Statutes*.³⁹ The incorporation process requires filing an incorporation petition with circuit court. The incorporation must meet certain statutory criteria reviewed by the Municipal Boundary Review Section of the Wisconsin Department of Administration. The Department of Administration is the administrative agency charged with facilitating the incorporation process, determining the ability of the territory petitioned for incorporation to meet certain minimum statutory standards, and advising the circuit court to either accept or reject the incorporation petition.

Deciding whether to attempt incorporation is a decision to be collectively undertaken and financed by citizens residing in the territory under consideration. Citizens need to consider not only whether the population and area standards to be initially reviewed by the circuit court can be met, but also whether the territory, level of proposed services and budget, and other relevant issues meet the more difficult statutory standards required to be evaluated by the Department of Administration.

The incorporation process begins with citizens determining the proposed boundaries of the territory to be incorporated and preparing a scale map and legal description of the territory. The citizens also need to determine the resident population of the territory. There are different provisions depending on the population and size of the territory and the proximity of the territory to cities of 25,000 or more population.

The citizens then need to publish a class 1 notice of intent to circulate a petition for incorporation. A petition is then drawn up and circulated for signatures. The petition must receive either 25 or 50 signatures, depending on the size of the territory. The petition shall designate a representative of the petitioners and an alternate.

After enough signatures are gathered, the

petition must be filed with the circuit court along with proof of publication. This filing must occur within six months of the date of publication of notice of intent to circulate.

The circuit court then conducts a hearing on the petition. The court determines whether certain statutory standards are met,⁴⁰ and whether any parties are entitled to intervene in the incorporation proceedings. If the court determines the map, legal description, population, and area standards are met, the petition is referred to the Department of Administration for analysis of the proposed incorporation. The Department may hold a public hearing on the petition if one is requested by any party of interest.

The Department of Administration analysis is a critical part of the incorporation process. The Department is required to determine whether the proposed incorporation meets certain standards. These standards include:

□ Characteristics of the Territory. The territory must meet certain standards of homogeneity and compactness, and must have a "well developed community center" if the incorporation petition is for an isolated city or village.⁴¹

□ Territory Beyond the Core. For isolated cities or villages, the territory beyond the most densely populated one-half or one square mile must have an average of more than 30 housing units per quarter section or an assessed value of real estate of which more than 25 percent is attributable to existing or potential mercantile, manufacturing, or public utility uses. For metropolitan cities or villages, the territory must have the potential for residential or other land use development on a "substantial scale within the next 3 years."⁴² These criteria may be waived by the department to the extent that water, terrain, or geography prevents such development.

Additionally, the following statutory criteria must be applied to the area petitioned for incorporation. While they are not absolute requirements as with the two above, they are evaluative measures of the ability of the territory proposed for incorporation to function as a

Guide to Community Planning in Wisconsin

community in either an isolated or metropolitan setting.

☐Tax Revenue. Petitioners are required to produce a proposed municipal budget following the municipal chart of accounts format, and the Department of Administration will review the budget and the tax base to determine whether or not the area proposed for incorporation could likely raise the revenue necessary to support an independent municipal government.

☐Level of Services. If a contiguous municipality (which will have previously been determined by the circuit court to be a party in interest) files a certified copy with the court of a resolution to annex the territory proposed for incorporation, then the Department of Administration will compare the level of governmental services "desired or needed by the residents of the territory compared to the level of services offered by the proposed village or city and the level available from a contiguous municipality...."⁴³

☐Impact on the Remainder of the Town. The probable effect of the removal of the territory from the town of which it is presently a part, financial and otherwise, will be considered.

☐Impact on the Metropolitan Community. The probable effect of the creation of another municipality on the future rendering of governmental services within the metropolitan community will be evaluated. The Department of Administration must be able to make an express finding that the proposed government will not "substantially hinder the solution of governmental problems affecting the metropolitan community."⁴⁴ Metropolitan problems, depending upon the location of the proposed incorporation, may involve regional environmental quality, employment, housing, transportation, provision of public sewer and water, and similar issues. Isolated incorporation petitions are not subject to this requirement.

The Department of Administration may prepare a draft environmental assessment and release it for a 30-day public comment period. The Department of Administration will also prepare a determination for the circuit court and

submit it to the court within 90 days, or by a subsequent date agreed upon by the parties as specified by the court. (Given the reality of the complexity of urban areas, evolving case law, and standards that have remained unchanged for 40 years, the incorporation review may take a year or more to process.) The determination includes either a recommendation to grant the petition for incorporation, reject the petition for failure to meet one of the required standards for incorporation, or order that petitioners should file an amended petition.

The circuit court then acts on the information provided to it by the Department of Administration. The court either grants the petition for incorporation and orders a referendum election to be held, or dismisses the petition. The determination of the Department of Administration and the order of the court are subject to administrative or judicial appeal.

Inquiries concerning municipal incorporation should be addressed to the Director of the Municipal Boundary Review section of the Wisconsin Department of Administration, P.O. Box 952, Madison, WI 53703

Guide to Community Planning in Wisconsin

4. Relationship of Local Planning to State/Federal Lands and Laws

Generally, local land use controls do not apply to federal or state lands. However, state buildings (except the Capitol in Madison and buildings at State Fair Park in West Allis), are subject to local zoning regulations.⁴⁵ The supremacy clause of the U.S. Constitution exempts federal lands and buildings from local land use controls, unless a federal law specifically allows local controls to apply to federal property.⁴⁶

The authority of local government is limited by the principle that state law is supreme over local law. Local government must therefore comply with state laws. Local ordinances cannot conflict with state law. The Legislature may also completely withdraw or “preempt” the power of local governments to act in a certain area.

The federal government also has the authority in certain matters to preempt local regulations. Two examples explored below are the Telecommunications Act of 1996 and the Americans with Disabilities Act.

4.1 Telecommunications--Wireless Facilities Siting

The federal Telecommunications Act of 1996 established new federal policy for the future of all telecommunications. That policy is to promote competition in all sectors of the telecommunications industry by breaking down legal and functional barriers. The Act seeks to promote private investment and assure that telecommunications services are available to everyone.

The intent of Congress is summed up in Section 253 of the Act, which reads: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

Wireless telecommunication, which is only one part of the field of telecommunications,

is a very dynamic industry. Personal wireless services (cellular telephones, pagers, personal communications services) will respond quickly to customer demands that may result from the construction of new roads and new commercial and residential development. Wireless services are also increasingly important to public safety by providing communication during emergencies resulting from natural disasters or accidents. The number of wireless customers in the United States is growing by over 30 percent annually. It is important that communities include telecommunications systems in their planning activities.

Under the Act, "personal wireless facilities" are transmitters, antenna structures, and other types of installations used for the provision of personal wireless services. Home satellite services are not considered personal wireless services.

The Wisconsin Court of Appeals held that the requirements of the Telecommunications Act of 1996 applied to a request to site a cellular tower which was filed prior to the passage of the Act.⁴⁷

4.1.1 Impact on Local Authority

The Act expressly preserves state and local government powers to regulate the placement, construction, and modification of wireless towers and facilities. This provision is contrary to the interests of the cellular industry, which lobbied for federal preemption of local regulatory powers. While local government has the authority to deny a request for a tower siting, there are a number of very important conditions which the Act places on local government. These limitations are outlined below:

□ State and local governments cannot unreasonably discriminate among providers competing to deliver similar wireless services. This prohibition is to prevent governments from favoring one competitor over another. It does not

Guide to Community Planning in Wisconsin

prevent localities from treating facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning ordinances, even if those facilities provide similar services.

□State and local governments cannot directly or indirectly prohibit the provision of wireless services. This provision prevents such actions as categorical bans and moratoriums of unspecified duration. Local governments are still allowed to impose different aesthetic or safety restrictions in residential and commercial zones. This provision also does not mean that every locality must allow a cellular tower. The number and location of antennae needed to provide adequate personal wireless service signal coverage to a community will vary depending upon such things as topography and density of population and buildings. A residential community that is very small geographically might be able to show that its residents will be able to receive satisfactory service from cellular towers located in a neighboring jurisdiction. Prohibiting the siting of towers in the community may not have the effect of prohibiting the provision of service to the residents. The Act requires the "provision of the service," not the siting of the facility.

□State and local governments must act on all wireless facility siting, construction, and modification requests within a reasonable time. What is considered a "reasonable period of time" will depend on the nature and scope of the request. If the siting of the facility requires a zoning variance, for example, the time period for rendering a decision should be the usual period under such circumstances. Communities can provide an expedited review process if they want to encourage the siting of facilities in certain areas, such as on public lands (which can be leased to the telecommunications companies), putting antennae from multiple telecommunications service providers on one tower (co-location), and/or the placement of new facilities on existing structures such as water towers.

□Any decision to deny a request regarding a wireless service facility must be in writing and supported by substantial evidence contained in

the written record of the decision making body. The "substantial evidence test" is the traditional standard used for judicial review of local government actions. Many local communities already do this and should be unaffected by this requirement. Communities that do not will need to change their procedure. It is advisable to have a.) written applications; b.) written materials documenting the review of the application by the staff or officials; c.) written transcripts of any hearings on the application; d.) written copies of testimony presented at any hearing; e.) a written record of the decision denying the application, including references to evidence in the record that formed the basis for the denial.

□State and local governments cannot regulate the siting, construction, or modification of wireless service facilities on the basis of the environmental effects of radio frequency emissions unless the facility is not in compliance with Federal Communications Commission (FCC) emission regulations. Local communities can require that an applicant provide evidence that the tower meets FCC standards.

In accordance with the Act, service providers may challenge unfavorable local land use decisions in state or federal court. Challenges concerning tower emissions, however, must be filed with the FCC.

Finally, applicants must also comply with mandatory federal environmental statutes, if those laws are applicable to a particular situation. Applicants must evaluate the location of proposed structures to determine if they are in environmentally sensitive areas. If a proposed location falls within one of the following categories, the applicant will need to prepare an environmental assessment under the National Environmental Policy Act: If the proposed facility is in an officially designated wilderness area, wildlife preserve, 100-year floodplain (as determined by the Federal Emergency Management Agency's flood insurance maps); if the location may affect threatened or endangered species under the federal Endangered Species Act, or historic districts or sites listed or eligible for

Guide to Community Planning in Wisconsin

listing in the National Register of Historic Places, or Indian religious sites; if the location will cause significant change in surface features, such as wetland fills, deforestation, or water diversion; or if there is proposed use of high intensity white lights in residential neighborhoods, as defined by applicable zoning laws.

4.1.2 Need for Planning & Cooperation

In light of the requirements of the Act, local communities need to review their land use ordinances to be sure they are consistent with the provisions of the Act. Communities also need to be sure they follow appropriate record keeping procedures. More importantly, communities need to work cooperatively with other communities as well as the telecommunication companies to plan for the appropriate location of wireless services. Much of the planning work may require the use of a qualified expert in telecommunications.

By planning for these facilities in advance, communities can better explore the options that may be available for the siting of wireless facilities, such as encouraging the location of sites on publicly owned land. Communities can also address aesthetic issues if they are concerned about the visual impact of personal wireless facilities. For example, communities can encourage the camouflaging of antenna structures, such as by painting the structures a certain color. Finally, to reduce the proliferation of tall towers, antennas for personal wireless services can sometimes be mounted on existing structures such as water towers, farm silos, tall buildings, church steeples, street lights, electric towers, or existing communications towers (television, radio, etc.). Telecommunications development is a national priority. Local communities need to be prepared for it.

4.2 **Local Regulation of Satellite “Dishes” and Television Antennas**

The Telecommunications Act of 1996 also required the FCC to adopt rules to prohibit restrictions that impair a person’s ability to receive video programming services through devices designed for over-the-air reception of

television broadcast signals (TVBS), multichannel multipoint distribution service (MMDS), direct broadcast satellite services (DBS), or satellite earth stations. In August of 1996, the FCC adopted a rule which preempts state and local regulation of these devices. The rule is in two parts and is described below.

The first part covers satellite dish antennae that are one meter or less in diameter, MMDS antennae that are one meter or less in diameter, and all television antennae.⁴⁸ The rule broadly prohibits any restriction of these antennae by any state or local land use, law or regulation (such as zoning, land use, or building regulations), or by private restrictions, such as private covenants or homeowner’s association rules, that impair the installation, maintenance, or use of antennae used to receive video programming.

For purposes of the rule, a restriction will impair the installation, maintenance, or use of an antenna if it: (1) unreasonably delays or prevents installation, maintenance or use; (2) unreasonably increases the cost of installation, maintenance, or use; or (3) precludes reception of an acceptable quality signal.

The rule includes certain exceptions to the general prohibition on restrictions. Under these exceptions, a restriction is permitted, even if it impairs or prevents reception or imposes unreasonable cost or delay if it is:

- (1) necessary to accomplish a clearly defined safety objective that is either stated in the text, preamble or legislative history of the restriction or described in a document that is available to antenna users and is applied in a nondiscriminatory manner to other devices; or
- (2) necessary to preserve an historic district listed or eligible for listing in the National Register of Historic Places and imposes no greater restrictions than on other devices.

The following material is excerpted from a fact sheet prepared by the FCC to provide guidance on implementing these rules:

Are all restrictions prohibited?

Guide to Community Planning in Wisconsin

No. Many restrictions are still valid. A requirement that an antenna be placed in a position where a reception would be impossible or would be substantially degraded would conflict with the rule. However, a regulation requiring that antennas be placed to the extent feasible in locations that are not visible from the street would be permitted, if this placement would still permit reception of an acceptable quality signal.

Safety restrictions are permitted even if they impair reception, because local governments bear primary responsibility for protecting public safety. Examples of valid safety restrictions include fire codes preventing people from installing antennas on fire escapes, restrictions requiring that a person not place an antenna within a certain distance from a power line, electrical code requirements to properly ground the antenna, and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person wanting to install an antenna knows what restrictions apply. The restriction cannot impose a more burdensome requirement than is needed to ensure safety.

Restrictions in historic areas may also be valid. Because certain areas are considered uniquely historical and strive to maintain the historical nature of their community, these areas are exempted from the rule. To qualify as an exempt area, the area must be listed or eligible for listing in the National Register of Historic Places. In addition, the area cannot restrict antennas if such a restriction would not be applied to the extent practicable in a non-discriminatory manner to other modern structures that are comparable in size, weight and appearance and to which local regulation would normally apply. Valid historical areas cannot impose a more burdensome requirement than is needed to ensure the historic preservation goal.

The second part of the rule applies to satellite earth stations which are over one meter in diameter and to satellite devices that are not designed to receive video programming.⁴⁹ The rule preempts state and local regulations that materially limit transmission or reception by

satellite earth station antennae, or impose more than minimal costs on users of such antennae unless the state or local government can demonstrate that the regulation is reasonable. A regulation is reasonable if (1) it has a clearly defined health, safety, or aesthetic objective that is stated in the text of the regulation itself; and (2) it furthers the stated health, safety, or aesthetic objective without unnecessarily burdening the federal interests in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers.

The rule also states that any state or local regulation that affects the installation, maintenance, or use of a satellite earth station antenna that is two meters or less in diameter, which is located in a commercial or industrial area, is presumed unreasonable.

The FCC will grant waivers from specific requirements of the rule if a state or local government can demonstrate unique local concerns to the FCC.

4.3 Americans with Disabilities Act

The American with Disabilities Act (ADA) is another law that impacts local planning. The law, which took effect in 1992, is designed to bring people with disabilities into the economic mainstream by providing access to jobs, transportation, and public services and facilities.

Title II of the ADA prohibits state and local governments from denying people with disabilities access to governmental programs or activities because public facilities are inaccessible. If it is possible to make programs accessible through alternative means, such as relocating programs to another facility, structural changes are not required. New public facilities must be designed so they are readily accessible and usable by disabled persons. Finally, Title II requires that governments provide curb ramps for access to public facilities, including access to public transportation. Historic properties are not required to comply if accessibility would destroy the historic significance of the property.

Title III of the ADA requires that

Guide to Community Planning in Wisconsin

privately owned public accommodations remove barriers to their facilities to make them accessible to people with disabilities. Public accommodations include privately owned places such as restaurants, hotels, theaters, and laundromats. Removal of existing barriers is required when readily achievable. The ADA also contains specific guidelines for parking spaces for public accommodations. Local ordinances should reflect the need to comply with the requirements of the ADA.

Guide to Community Planning in Wisconsin

5. Indian Nations

Wisconsin is home to 11 federally recognized Indian tribes. These tribes are all organized under the Indian Reorganization Act of 1934. Each tribe has its own unique history. Six of the tribes are separate bands of one Nation, the Chippewa or "Ojibwa." These tribes are the Bad River Chippewa Indians, the Red Cliff Indians, the St. Croix Chippewa Indians, the Lac du Flambeau Indians, the Sakaogon (often called "Mole Lake") Tribe, and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians. These tribes have occupied Wisconsin for centuries. Three additional tribes, the Wisconsin Ho Chunk (formerly known as the Winnebago), the Potawatomi, and the Menominee Indians are also long time residents of Wisconsin. The two remaining tribes, the Stockbridge-Munsee Band of Mohican Indians, and the Oneida Tribe, were forced to relocate to Wisconsin from New York in the 1820s.

These eleven tribes are sovereign nations, meaning they are independent, separate, political entities with the right of self-government.⁵⁰ There are two general sources of tribal sovereignty: inherent and delegated. Inherent tribal sovereignty pre-dates the United States and persists unless specifically taken away by treaty or act of Congress.⁵¹ Delegated sovereignty includes the authority given the tribes by Congress. As a general rule, because of the concepts of tribal sovereignty, states and local governments are generally precluded from exercising jurisdiction over tribal members on tribal lands unless Congress has clearly expressed an intention to permit that assertion of jurisdiction.⁵²

While Indian tribes are sovereign governments, in 1924, the U.S. Congress conferred citizenship upon all Indians born within the United States.⁵³ The grant of federal citizenship also made Indians citizens of the states in which they reside. As citizens, Indians can vote in local, state, and federal elections. This citizenship status does not affect the special relationship between the tribes and state and federal governments.

Indian lands today, are subject to a complex set of laws that often impact individual Indian tribes in unique ways. The planning efforts of Indian tribes are often linked to the concept of "Indian country."

Indian country includes Indian and non-Indian owned lands located within the boundaries of any Indian reservation; Indian lands owned by or held for Indians which are not part of a reservation but which are part of a dependent Indian community; and all Indian allotments, where the Indian titles have not been extinguished.⁵⁴ Land held in fee⁵⁵ by an individual Indian which is not part of a dependent Indian community is not part of Indian country.

In terms of Indian ownership of land, the largest category of Indian lands are tribal trust lands. These lands are held in trust by the federal government for the use of a tribe. The federal government holds the legal title and the tribe holds the beneficial interest. Trust lands are held communally by the tribe in undivided interest and individual tribal members share in the enjoyment of the entire property with no claim to a particular piece of land. The tribe is treated as a single entity that owns the undivided beneficial interest.⁵⁶

In general, lands may be placed in trust for an individual Indian or for a tribe when the land is located within an Indian reservation or adjacent to the reservation. Land acquired by the tribe, which it wishes to have held in trust, must be approved by the Bureau of Indian Affairs. The Secretary of the U.S. Department of the Interior may also authorize the placement of land in trust status if it is necessary to facilitate tribal self-determination, economic development, or Indian housing.⁵⁷

The criteria to be considered by the Bureau of Indian Affairs when taking land into trust status include the need of the individual Indian or tribe for additional land; the purpose for which the land will be used; the impact on the state and local government of removing the land from the tax rolls; and jurisdictional problems and land use conflicts that may arise due to the placement of land in trust status.⁵⁸

Tribal lands held in trust by the federal government generally fall within the jurisdiction

Guide to Community Planning in Wisconsin

of the tribes as sovereign nations. Tribal jurisdiction over trust lands limits the exercise of jurisdiction by state and local governments over those lands. Therefore, Indian lands held in trust are generally exempt from state and local taxation⁵⁹ and state and local land use regulations.

Within Indian country, tribal governments can enact laws applicable to trust lands. Tribal governments can impose taxes on those lands and exclude non-Indians from those lands. Tribal governments can also establish courts and administer justice, as well as determine tribal membership and form of government.

Tribal control over non-Indian lands located in Indian country can be a confusing issue. The U.S. Supreme Court has held that tribes generally do not have regulatory authority over non-Indian lands within the reservation boundaries unless: 1) the non-Indians enter into a consensual relationship with the Tribe through commercial dealings, contracts, leases, or other arrangements; or 2) the non-Indian conduct "threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe."⁶⁰ In very limited situations, courts have used this test to allow Tribes to regulate some uses of non-Indian lands. One court used the test to uphold tribal power to enforce a shoreline protection ordinance on non-Indian fee lands on the reservation.⁶¹

In another case, the U.S. Supreme Court held that tribes could zone non-Indian fee lands within the boundaries of the reservation if those lands had retained their "essential character" as Indian land.⁶² If the essential Indian character of the area had been lost through significant non-Indian ownership of the land, the tribe has no power to zone fee lands of non-Indians.⁶³ The power to zone the fee lands of non-Indians therefore rests with the local unit of government with land use jurisdiction over that area.⁶⁴

A number of federal environmental laws authorize the U.S. Environmental Protection Agency (EPA) to delegate the administration of the federal environmental programs to state governments. Some of the laws also allow the EPA to treat tribes in the same manner as states by delegating administration of those programs to

tribal governments. The general criteria for the treatment of tribes in the same manner as states are: (1) the tribe must be federally-recognized; (2) the tribe must have or be able to exercise substantial governmental powers; (3) the tribe must have jurisdiction over the area in question; and (4) the tribe must have the financial, physical and human resource capability to effectively implement a program.

The EPA's actions are based on its environmental policy, adopted in 1984. EPA's policy reflects the Federal Indian Policy adopted by President Reagan in 1983. The federal policy stresses two related themes: (1) promoting of Indian self-government, and (2) the government will work directly with tribal governments on a "government-to-government" basis.

Environmental statutes which have been amended to allow for EPA authorization of tribal programs, include the Safe Drinking Water Act, the Clean Water Act, and the Clean Air Act. Under two Acts, EPA has used its discretion to allow for tribal programs even though Congress has not specifically provided for tribal assumption of the environmental programs. These Acts are the Resource Conservation and Recovery Act and the Toxic Substance Control Act. In addition, three other environmental laws allow for a limited tribal role similar to the state's role. These laws are the Federal Insecticide, Fungicide, and Rodenticide Act; the Emergency Response and Community Right to Know Act; and the Comprehensive Environmental Recovery, Compensation, and Liability Act (Superfund).

EPA has a number of programs which seek to build tribal capacity to administer environmental programs on tribal lands. The process used by tribes for administering tribal programs is similar to the process followed by other governments--establish the necessary legal framework through the adoption of codes and ordinances and establish an administrative body to enforce tribal standards.

Guide to Community Planning in Wisconsin

6. Alternative Dispute Resolution (ADR)

Conflict is often part of the planning process. Although conflicts can arise in many planning contexts, intergovernmental issues are a source of many planning conflicts. It is therefore appropriate to discuss alternative dispute resolution here. However, the concepts discussed below are applicable to issues that arise outside the intergovernmental context as well.

Conflicts may be resolved with a local government making a decision and the disappointed parties filing a lawsuit. Alternative dispute resolution (ADR) is a way to deal outside the courts with conflict that arises over planning issues. The best known form of ADR is mediation. ADR also covers a number of activities, including facilitated negotiation, two-party negotiation, and binding arbitration. Although there is a long tradition of using ADR techniques to settle disputes in a wide variety of situations, in labor disputes for instance, an increasing number of state agencies and local governments have recently begun to explore resolving public policy disputes using ADR techniques.

ADR can help focus issues that are the source of conflict. Because ADR processes are generally voluntary, ADR is dependant upon open communication and a willingness to negotiate. Planning often focuses on solving problems. Likewise, ADR focuses on solving problems, not on declaring "winners" and "losers."

ADR can be a useful tool in planning. Many planning projects are controversial. The acronyms NIMBY (Not In My BackYard) and LULU (Locally Unwanted Land Uses) are prevalent in political conversations and in newspapers. Planning projects affect people. If people misunderstand them or are negatively impacted by them, they will contest planning initiatives.

ADR is an appropriate tool to consider in conflict situations that may arise over a specific development proposal. ADR is also an appropriate tool to use to achieve consensus on the creation of community policies and ordinances

that may result from a planning process.

ADR techniques aim to create win/win outcomes in disputes. Community fears about the impact of new developments or capital projects need to be addressed. ADR provides a forum for addressing those fears, minimizing them when possible, and compensating communities appropriately when the potential for negative impact is real. Again, ADR's ultimate goal in the planning arena is for development to occur in such a way as to benefit all involved parties.

The remainder of this section outlines a process for creating consensus about planning disputes through mediation.⁶⁵ However, the principles that guide the process can be adapted to work in many ADR settings. Mediation requires the use of a mediator. A mediator is often a neutral third party. The mediator does not make decisions like a judge. The mediator helps facilitate the negotiations. Mediation is a "bottom up" process driven by the willingness of the parties to negotiate and not a "top down" process where a decision is rendered. The mediator works with the disputing groups, perhaps a developer and a neighborhood organization, to try to match the interests of each so that development occurs in such a way as to benefit both parties. A mediator needs to be knowledgeable about planning issues and trained in dispute resolution techniques.

There are three phases to the mediation process. They are the prenegotiation phase, the negotiation phase, and the implementation phase. Within each phase, the mediator must go through several steps.

Prenegotiation

1. Getting Started- In this step the mediator meets with the stakeholders in the dispute to see where their interests lie and to describe how consensus building and ADR work.

Guide to Community Planning in Wisconsin

2. *Representation*- Not every person with a stake in the dispute can be a part of the negotiation. In this step, the negotiator caucuses with stakeholder groups to choose spokespersons and to make sure that all groups involved in the dispute are represented.

3. *Drafting Protocols and Agenda Setting*- This step involves drafting rules for the negotiation and managing the process of agenda setting among the various spokespersons.

4. *Joint Fact Finding*- Instead of each individual group having its own stable of experts, the mediator along with the group should gather data or hire consultants to act as objective analysts for the group as a whole.

Negotiation

1. *Inventing Options*- The mediator manages a brainstorming process where possible win/win solutions to the dispute are created. A committee should also be created to formalize the ideas into draft options.

2. *Packaging*- Often it is necessary to caucus with separate interest groups to suggest possible tradeoffs to create option packages that are good for everybody.

3. *Written Agreement*- In this phase, the mediator works with a subcommittee of the negotiation group to produce a draft agreement to be voted on by the spokespersons' constituents.

4. *Binding the Parties*- The agreement must mean something. A good mediator will look for innovative ways to bind the parties to the agreement.

5. *Ratification*- This is where the constituents vote on the draft agreement. A skilled mediator can help "sell" an agreement to the spokespersons' constituents.

Implementation

1. *Linking Informal Agreements and Formal Decision Making*- It is important that the work of the negotiation group be acted on by the unit of government associated with the dispute. The

mediator must help the negotiation group to connect with public officials and to identify where there are legal constraints to implementation.

2. *Monitoring*- A subcommittee should be formed to monitor the implementation of the agreement.

3. *Renegotiation*- Sometimes consensus about the issue will break down. The mediator should be ready to reassemble the participants to remind the group of its earlier intentions and to deal with new disputes as they arise.

A successful mediation is one where all the parties believe they have negotiated a better result than they could otherwise have obtained. However, ADR will not work in all situations. For instance, there are situations when development simply should not occur in a place. If a developer is unwilling to change the location of such a development, no amount of negotiation is useful.

In circumstances where the interest groups' power is relatively equal and in circumstances where the basic nature of the project is ecologically and socially sound, an ADR approach is an effective means of resolving conflict. The willingness of a party to voluntarily enter into an alternative dispute resolution process depends on what other options exist for that party. The other options will depend upon the party's financial resources, its legal and political position, and the degree to which it is vested in a dispute. In light of these options, if the party believes it is better off not negotiating, it has little incentive to negotiate.⁶⁶ The options often relate to the existence of power differentials among interest groups. A developer, for instance, might believe that it is unlikely a citizen group would challenge his development in court. If the possibility of being sued seems remote, the developer may feel he has little to gain from going through a consensus building process. In fact, he might feel he has much to lose. The outcome of the process could cost him. Some would argue that the good will of the neighbors is enough incentive for developers to get involved; others disagree.

Guide to Community Planning in Wisconsin

7. Endnotes

1. Official mapping is another extraterritorial tool. City or village official maps can be extended into extraterritorial areas under section 62.23(6)(d) of the *Wisconsin Statutes*. Such a map reserves sites of future streets, parks or parkways against interim private structural development and couples this with a variance procedure for hardship cases.
2. This section is not intended to be a complete guide to annexation. Towns, cities, and villages should contact the League of Wisconsin Municipalities, (608) 267-2380, 202 State Street, Suite 300; Madison, WI 53703, and obtain a copy of **Annexation of Territory to Wisconsin Cities and Villages** published by the League. This publication contains specific directions, case law history, and sample forms. The Wisconsin Towns Association is another helpful resource. The Association can be reached at (715) 526-3157; W7686 County Road MMM, Shawano, Wisconsin 54166-6086.
3. Wis. Stat. § 66.021(12).
4. An “elector” is a person who has a legal right to vote. They do not need to be a registered voter but they must be a United States citizen, at least 18 years old, and must have resided in the election district for at least 10 days.
5. Under Ch. 985, Stats.
6. The notice shall contain the items outlined in Wis. Stat. § 66.021(1)3.
7. Wis. Stat. § 66.021(2)(b).
8. Wis. Stat. § 66.025.
9. Wis. Stat. § 66.024.
10. Sample annexation petitions can be found in **Annexation of Territory to Wisconsin Cities and Villages**, published by the League of Wisconsin Municipalities or can be requested from Municipal Boundary Review.
11. The criteria is found at Wis. Stat. § 66.021(11).
12. *Incorporation of the Town of Pewaukee*, 186 Wis. 2d 515, 525, 521 N.W.2d 453 (Ct. App. 1994).
13. Wis. Stat. § 66.021(8)(a).
14. The address of the Office of the Secretary of State is: Annexations and Railroads, Division of Government Records, Office of the Secretary of State, P.O. Box 7848, Madison, WI 53707-7848.
15. *Town of Delavan v. City of Delavan*, 176 Wis.2d 516, 528, 500 N.W.2d 268, 272 (1993).
16. Wis. Stat. § 66.021(15).
17. *Town of Delavan v. City of Delavan*, 176 Wis.2d 516, 528, 500 N.W.2d 268, 272 (1993).
18. Wis. Stat. § 59.692(7) (county shoreland zoning); Wis. Stat. § 59.693(10) (county erosion control and stormwater management zoning ordinances); Wis. Stat. § 60.627(9) (town erosion control and storm water management zoning).
19. Wis. Stat. § 66.30.
20. Wis. Stat. § 66.027.
21. Wis. Stat. § 66.023. However, under cooperative boundary plans and agreements, only towns, cities and villages may be parties to the agreement.
22. Wis. Stat. § 66.028.

Guide to Community Planning in Wisconsin

23. Wis. Stat. § 66.30.
24. Wis. Stat. § 66.027.
25. Wis. Stat. § 66.023.
26. Wis. Stat. § 66.023(4)(a).
27. Wis. Stat. § 66.023(3).
28. Wis. Stat. § 66.023(7m).
29. Wis. Stat. § 66.023(4)(d).
30. Wis. Stat. § 66.023(4)(e).
31. Wis. Stat. § 66.023(6).
32. Wis. Stat. § 66.023(7).
33. Wis. Stat. § 66.028.
34. Wis. Stat. § 66.028(4)(a)1.
35. Wis. Stat. § 66.021.
36. Wis. Stat. § 66.023.
37. Wis. Stat. § 66.027.
38. Wis. Stat. § 66.30.
39. Incorporation is governed by sections 66.013 through 66.019 of the Wisconsin Statutes.
40. The standards appear in Wis. Stat. § 66.015.
41. Wis. Stat. § 66.016(1)(a).
42. Wis. Stat. § 66.016(1)(b).
43. Wis. Stat. § 66.016(2)(b).
44. Wis. Stat. § 66.016(2)(d).
45. Wis. Stat. § 13.48(13).
46. 5 Ziegler, **Rathkopf's The Law of Zoning and Planning** § 53.10 (1991).
47. See *Westel-Milwaukee Co., Inc., v. Walworth County*, 556 N.W.2d 107 (1996).
48. The rule is found at 47 C.F.R. § 1.4000.
49. The rule is found at 47 C.F.R. § 25.104.
50. *United States v. Wheeler*, 435 U.S. 313, 322 (1978).
51. *Nance v. E.P.A.*, 645 F.2d 701,713 (9th Cir. 1981)
52. *Bryan v. Itasca County*, 426 U.S. 373, 376-77 and n. 2 (1976); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987).
53. Citizen Act of 1924, 8 U.S.C. § 1401(b).
54. 18 U.S.C. § 1151.

Guide to Community Planning in Wisconsin

55. "Fee" or "fee simple" is the way that most people own real property. It provides someone with absolute ownership of real property and with the unconditional power of disposition during their lifetime.
56. **Indians, Indian Tribes and State Government**, prepared by Minnesota House of Representatives Research Department (1993).
57. 25 C.F.R. § 151.3(a).
58. 25 C.F.R. § 151.10.
59. However, in *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 112 S.Ct. 683 (1992), the Supreme Court held that Indian-owned fee land in Indian country which was allotted pursuant to the General Allotment Act is subject to state property taxation.
60. *Montana v. United States*, 450 U.S. 544, 565-66 (1981).
61. *Confederated Salish and Kootenai Tribes v. Namen*, 665 F.2d 951, 964 (9th Cir. 1982).
62. *Brendale v. Confederated Yakima Nation*, 492 U.S. 408, 440-43 (1989). See also *South Dakota v. Yankton Sioux Tribe*, 118 S.Ct. 789 (1998), in which the Court held that a tribe did not have jurisdiction over a landfill given the unique facts of the case, and *South Dakota v. Bourland*, 508 U.S. 679 (1993).
63. 429 U.S. at 446-47.
64. Singer, Joseph W. 1991. "Sovereignty and Property." **Northwestern University Law Review**. 86(1):1-56, at 7.
65. The process comes from the book, **Breaking the Impasse: Consensual Approaches to Resolving Public Disputes** by Lawrence Susskind and Jeffrey Cruikshank (Basic Books, Inc., 1987).
66. The willingness to negotiate is known as "BANTA" or "Best Alternative To a Negotiated Agreement," as discussed in Roger Fisher and William Ury's book entitled **Getting to Yes** (Penguin Books, 1981).

Chapter 9

TRANSPORTATION

Chapter 9

- 1. Land Use and Transportation**
- 2. Planning Assistance**
- 3. Transportation Facility Control**
- 4. Resource Materials**
- 5. Endnotes**

Transportation issues are often an important part of local planning efforts. This chapter summarizes some of the planning programs of the Wisconsin Department of Transportation (WisDOT) that may be important to local communities. Other sources of information for planning can be found in the regional planning commission, the county highway department, the local mass transit provider, and other local offices.

1. Land Use and Transportation

In December of 1991 the federal government adopted the Intermodal Surface Transportation Efficiency Act (ISTEA). ISTEA was widely hailed for its emphasis on improving connections between transportation decision making and community land use goals. The legislation required that all proposed transportation projects be evaluated within the broad context of a comprehensive long-range planning process that considers local and state mobility goals. It further required that these broad

goals be evaluated within the more focused goals for overall community quality, environmental protection, economic growth, and energy efficiency. Finally, ISTEA recommended that the transportation planning process consider the impact of transportation policy decisions on land use, and the consistency between transportation plans and land use plans.

The Transportation Equity Act for the 21st Century (TEA-21), was signed by President Clinton on June 9, 1998, replacing ISTEA. The previous sixteen metropolitan planning factors and twenty-three state planning factors that were included in ISTEA have been consolidated into seven broad areas. There is more explicit emphasis on public transit use.

The Transportation and Community and System Preservation Pilot Program, a new program funded through TEA-21, also promotes the tie between transportation and land use planning. The program will support state and local planning, research, and implementation of projects that show coordination between transportation and sustainable land use.

Transportation is a factor in location decisions of commercial and industrial development. In locations where the development is included in local plans, communities are aware of the needed infrastructure. A region's transportation plan, which in turn is included into statewide transportation plans, can identify the transportation facilities needed by the development.

The land use and transportation relationship can be viewed as cyclical rather than as a one-way, causal relationship in either

Guide to Community Planning in Wisconsin

direction. The development cycle begins when population and economic growth create demand for land development. New economic development, especially low-density development at the edge of urbanized areas, results in more vehicle trips and places greater demand on surrounding streets and highways.

Local governments may produce plans that help guide how and where development should take place in local communities. These plans, in conjunction with a zoning ordinance, direct residential, commercial, industrial, and agricultural uses to the most appropriate part of the community. Transportation facilities are planned for by all levels of government, from the local to the state level. These facilities provide the access to develop required by land identified in the plan. This development in turn produces the trips that use the transportation facility. When coordination is lacking or is inadequate, the outcome can be land development that lacks sufficient access. The transportation facility is unlikely to meet the needs of the development, which can cause congestion and increase the chance for crashes. Retrofitting transportation facilities for enhanced mobility and access is difficult for local governments and WisDOT.

On the other hand, when sufficient transportation services are provided to alleviate congestion, the newly developing land may become even more accessible, resulting in higher land values and greater pressure to develop adjacent, undeveloped land. The cycle begins again with more intensive levels of development and greater transportation needs. This type of cycle often occurs in the urban fringe. Transit provision, and pedestrian and bicycle movements all become more difficult in this situation.

It is in the interest of both WisDOT and local governments to coordinate transportation and local land use planning. The department attempts to avoid adverse environmental impacts when planning, designing, and constructing its transportation facilities. When the department coordinates with local governments, it can address mobility needs based on planned development. If that planned development necessitates increased capacity, it can be included in the transportation plan for that area. If the department determines

that a different site would be more effective from a transportation perspective, it can work with the local government to consider other options or alternate sites for the proposed development. The ideal situation is that the department is included in the local planning process so that development and the transportation facilities to serve it can be coordinated for maximal efficiency and minimal environmental impact.

When coordination of local land use planning and provision of transportation facilities is accomplished, money and time can be saved over the short- and long-term. The local community benefits when its developments are planned and sited with adequate transportation facilities. The community's land is also used more efficiently when land is developed in proximity to other development and to transportation facilities. The department benefits because its transportation investments continue to function adequately to their planned design year. Taxpayers also get a satisfactory return on their tax investment when the transportation facility continues to function as planned and does not need to be upgraded or replaced before its design life.

Guide to Community Planning in Wisconsin

2. Planning Assistance

WisDOT provides assistance to local governments and transit operators to maintain and improve local transportation facilities and services. This chapter includes information about the programs that WisDOT can help fund for different planning activities on a local level.

2.1 MPO/RPC Planning assistance

This program uses federal and state funds to support land use and transportation planning activities conducted by the metropolitan planning organization (MPO) and regional planning commissions (RPCs) in Wisconsin. Federal funds are appropriated annually and apportioned to the states for use by the MPOs. The state funds are appropriated as part of the state biennial budget. The state funding supplements federal and local funding to MPOs, as well as supplementing local funding to RPCs.

The MPOs and RPCs develop annual work programs that are reviewed by both WisDOT and the U.S. Department of Transportation. However, the activities are generally initiated from local requests, with the exception of those MPO activities required by federal regulations, which include production of short-range transportation improvement programs and long-range multimodal transportation plans.

2.2 State Multimodal Transportation Studies

This program utilizes state transportation dollars in support of multimodal transportation planning, i.e. highways, transit, bicycle and pedestrian, transportation impacts of economic development, and preliminary engineering for public transportation projects. These funds are available to WisDOT for contract services or grants to local governments to conduct qualifying studies.

WisDOT administers the program. However, requests for studies come from local governments, metropolitan planning organizations, and regional planning commissions.

WisDOT may also initiate requests, but the department cannot use the program funds to pay for staff activities.

2.3 State Planning and Research (SPR)

This program utilizes federal transportation dollars in support of surface transportation planning, i.e. highways, transit, bicycle and pedestrian, and inventory activities performed by states. Funds are appropriated annually and apportioned to the states.

WisDOT develops an annual work program that supports various statewide surface transportation planning activities performed by WisDOT or under contract to WisDOT.

For further information about MPO/RPC planning assistance, multimodal transportation studies, planning and research contact WisDOT Urban Planning Section at 608-266-3662.

2.4 Transit Development Plans (TDPs)

The program provides assistance for a mid-range planning process that provides the framework to guide transit-system development, typically for a five-year period. The planning process includes the collection and analysis of demographic, land use, and transit operations information to develop a service improvement plan.

There are no federal or state regulations that mandate the creation, update, or components of a TDP. However, a transit system, in order to receive state assistance, needs to complete a TDP. The transit system typically initiates the update of a TDP, but transit planners at WisDOT or the community's MPO may also work with the transit system to initiate TDP-related activities.

2.5 Transportation Demand Management (TDM)

The TDM grant program is a competitive grant program that encourages innovative solutions and provides options and alternatives to the single-occupant vehicle in areas with

Guide to Community Planning in Wisconsin

congestion and/or air quality problems.

WisDOT solicits applications from eligible applicants on an annual basis. The program is competitive and solicits applications from local governments, chambers of commerce, environmental organizations, transit providers, and other groups.

For further information about TDPs or the TDM grant program, contact WisDOT's Public Transit Section at (608)-266-1379.

2.6 Surface Transportation Program (STP)—Discretionary

STP—Discretionary provides federal funding for local governments and state agencies to foster alternatives to single occupancy vehicle (SOV) travel. Projects range from transit capital to bicycle and pedestrian facilities to transportation demand management (TDM) activities.

Local sponsors and state agencies currently apply for STP-Discretionary funding. They assess local needs, set priorities, and submit project requests directly to WisDOT. Projects are recommended to the WisDOT Secretary by an intermodal, internal WisDOT review committee.

For further information about STP-Discretionary funding, contact WisDOT's Local Transportation Programs at (608) 264-8724.

2.7 Transportation Facilities Economic Assistance (TEA) and Development Program

The TEA grant program provides communities with infrastructure improvements such as access roads, widened intersections, and rail spurs to help attract a manufacturer to locate in that community. A 50 percent matching grant is provided to help construct the transportation improvement. Grants are based on actual job creation. For example, up to \$5,000 is given for each new job that is created as a result of the project.

Communities, local development organizations, engineering consulting firms, state economic development agencies, businesses, and/or WisDOT district offices may be involved in initiating and/or facilitating applications for TEA grants.

For further information about the TEA grant program, contact the WisDOT Economic Development Program at (608) 266-9910.

2.8 Statewide Transportation Enhancements Program (STEP)

The enhancements program provides federal funding to local governments and state agencies for projects that enhance what is normally done on a highway project. The 10 eligible project categories are as follows:

1. Providing facilities for bicycles and pedestrians.
2. Acquiring scenic easements and scenic or historic sites.
3. Sponsoring scenic or historic highway programs.
4. Landscaping and other scenic beautification.
5. Preserving historic sites.
6. Rehabilitating and operating historic transportation buildings or structures.
7. Preserving abandoned railway corridors.
8. Controlling and removing outdoor advertising.
9. Conducting archeological planning and research.
10. Mitigating water pollution due to highway runoff.

For further information about STEP, contact WisDOT's Local Transportation Programs at (608) 264-8724.

2.9 Aeronautics Assistance

Airport development programs provide state and federal aid grants for capital

Guide to Community Planning in Wisconsin

improvement projects on municipal and county airports.

The programs require height-limitation zoning within three miles of an airport; the zoning is to be adopted by individual municipal and county airport owners, who have the statutory authority to restrict the height of structures within three miles of the airport, regardless of municipal or county boundaries. Some communities also use this authority to zone for land use. Funding is provided to develop 20-year plans for airports.

For further information about aeronautics assistance, contact WisDOT's Airport Program Section at (608) 266-7655.

3. Transportation Facility Control

3.1 Functional Classification of Streets and Highways

Streets and highways serve two separate and conflicting functions, one to carry traffic and the other to provide access to abutting property (land use). The more traffic a road carries, the greater the difficulty in accessing property directly from the road. As the number and density of access points increases, safety is compromised and speed limits need to be lowered, reducing the traffic carrying capacity of the street or highway.

Streets and highways are classified by function. This ranges from the sole purpose of carrying traffic to that of primarily providing access to property. Following is a generally accepted classification and functional characterization of highways and streets:

PRINCIPAL ARTERIAL—A street or highway designed and given preference to carry traffic, but also providing access to abutting property. Cross traffic is accommodated at at-grade, signalized intersections for streets with high traffic levels, and at at-grade intersections without signals, for streets with moderate or low traffic levels. If intersections do not have signals, through traffic flow is given preference to the principal arterial.

FREEWAY—A fully access-controlled highway designed for high speed travel with the sole purpose of facilitating non-stop traffic flow without obstruction from cross traffic. Access is not provided to abutting property and access is only provided to other streets or highways at grade-separated interchanges. Freeways are a design type of principal arterials.

EXPRESSWAY—A partially access controlled highway designed for high speed travel for the sole purpose of facilitating traffic flow with minimal obstruction from adequately spaced cross traffic. No access is provided to abutting

property and access is provided to other streets or highways at grade-separated interchanges for streets with high traffic levels, at at-grade, signalized intersections for streets with moderate traffic levels and at at-grade intersections without signals, for streets with low traffic levels. Expressways are a design type of principal arterials.

MINOR ARTERIAL—A street or highway designed to both carry traffic and provide access to abutting property. Cross traffic is accommodated at at-grade intersections without signals for streets with low traffic levels. The primary purpose of the minor arterial is to serve moderate length neighborhood trips and to channel traffic from collectors and local streets to principal arterials or expressways.

COLLECTOR—A street or highway designed to carry traffic and provide access to abutting property. Cross traffic is accommodated at at-grade intersections with local streets. No signals are provided. The primary purpose of the collector is to serve short length neighborhood trips and to channel traffic from local streets and abutting properties to minor arterials and principal arterials.

LOCAL STREET—A street or rural road designed to provide access to abutting property and only incidentally channel traffic short distances to collectors or minor arterials.

The hierarchy of street and highway types forms a network that allows travel from most points of origin to most points of destination by motor vehicle at any time of day using the minimum time/distance combinations. The typical trip begins on a local trip and ends on a local street.

On the state trunk highway system, where traffic carrying capacity is of primary concern, the response to loss of performance and carrying capacity due to development allowed by local

Guide to Community Planning in Wisconsin

government land use decisions has been to relocate the highway as a bypass. Unless adequate access control is designed into the relocated facility, local government land use decisions often degrade the traffic carrying capabilities of the roadway.

3.2 Access Control

As cities expand, increased development along arterial highways generates more and more demand for driveways and intersecting local roads to serve abutting and nearby businesses, industries, and neighborhoods. Without access planning and management, arterials become increasingly congested and safety is compromised.

Access management is the process of planning and maintaining appropriate access spacing, access-point design, and total number of access points to a highway system. The goals of access management are to:

- Protect the public investment in highway facilities;
- Protect the function of state highways;
- Preserve operational safety, capacity, and efficiency;
- Promote orderly development of adjacent properties;
- Minimize long-range adverse impacts of future improvements;
- Minimize maintenance costs;
- Delay or eliminate the need to expand or relocate a facility;
- Permit expansion of two-lane facilities to four-lane facilities on the existing location, eliminating the need to completely relocate the facility.

WisDOT recognizes that in implementing access management, a balance must be sought between the interests of highway users and the owners or occupants of nearby lands; public investments in highway improvement and maintenance; and desirable land development. This balance requires that access reasonably and suitably accommodate landowners' use of their property. The intent of access management is to

allow adequate, safe, and reasonably convenient access to land and land uses, consistent with the interest of public safety and the preservation of the public investment in the highway facility.

3.3 Driveway Permitting

The State of Wisconsin controls activities on the highway right-of-way through the issuance of permits. Permitted activities include the installation, modification, or removal of driveways that provide access to the state highway system. This control is exercised to insure the safety of the traveling public and to minimize congestion on the roadway.¹ Anyone needing a permit must apply to a WisDOT transportation district office.

3.4 Access Covenant

An access covenant is a legal agreement between a property owner and WisDOT that limits the access points a property may have on the state trunk highway system. It is used to control access in a location which does not have administrative or purchased controls. Justification for an access covenant can be triggered by the review of a major development, subdivision of land, or a driveway permit request.

3.5 Transportation Impact Analyses (TIA)

A TIA is an engineering study that compares before and after traffic conditions on a road network due to a proposed land use change. Either a development driven request for a change in access controls or a request for a driveway permit may trigger the need for a TIA. A TIA is produced to identify for both WisDOT and the developer the optimum number and location of highway access points and any roadway changes needed to accommodate the traffic generated by the development. The study is an integral part of the site plan design.

A TIA should be considered whenever traffic generated by the proposed development is expected to exceed 100 vehicles in the peak hour. Greater consideration should be given to requiring a TIA on an already congested or unsafe highway than on one with lower traffic volumes and crash

Guide to Community Planning in Wisconsin

rates. Whenever WisDOT determines a TIA is necessary, the developer is required to provide it.

3.6 Land Division/Development Review

Under the land division laws, WisDOT is required to review official subdivision proposals for land that abuts state trunk or connecting highways. WisDOT also reviews and comments on proposed certified survey maps and condominium plats.² The department is interested in reviewing these development proposals because of a development's potential to generate significant impacts on state highways.

In many cases, land owners subdivide their land in phases, rather than all at once. This allows them the flexibility to respond to market demand with a minimal amount of financial investment. Phased land divisions are of particular interest to WisDOT because of their potential cumulative impact on state transportation facilities.

When official subdivision proposals are submitted to WisDOT for review, a check is made to determine whether the owner of the subdivision has other contiguous land that is not part of the subdivision proposal. The owner and surveyor are contacted to determine the need for an overall area development plan. The plan could identify the need for additional future access points, or it could show that adequate access exists for future travel needs.

An access covenant should be developed and submitted to the property owner, requiring its execution as a condition for approval of the subdivision. This will provide for orderly development in the future and a well thought out plan by the developer.

3.7 Zoning/Site plan review

WisDOT can participate with local governments in reviewing zoning changes and site plans in areas adjacent to or near state highways. As discussed in the zoning chapter, the law requires that an abutting land owner be notified when adjacent land is proposed for rezoning. However, local governments often do not think of a state highway as an adjacent property, therefore

notification of WisDOT is often overlooked. When the department is notified of a rezoning proposal, comments can be offered about the potential impact of the rezoning on the state highway.

Development site design can also affect state highways in terms of traffic flow and volume. When WisDOT participates with local governments in the review of site plans, the department can make specific comments about how a site plan could be improved to facilitate the flow of traffic onto and off of the state highway and improve safety. This review can also help to facilitate use of transit and accommodate and enhance pedestrian and bicycle travel.

In addition to reacting to local rezoning proposals and site plans, WisDOT can also take a pro-active stance in working with local governments to coordinate local land use decisions and state highway access management goals. By offering to assist local governments in developing zoning ordinances, comprehensive plans, and/or land use plans, the department can offer a perspective often not otherwise available in the local planning process.

3.8 Land Use Planning Around Airports

Incompatible land use in close proximity to airports is a major concern facing aviation today.³ Incompatible uses, predominantly residential development, threaten the continued usefulness of many airports to the communities they serve. A limitation of service, or ultimately the closure of an airport facility, represents a waste of a community investment as well as lost economic and social opportunities to the community.

Despite the effectiveness of today's aviation system and the far-reaching benefits it brings to the residents of Wisconsin, the optimum use of the system is under constant threat. In addition to the high cost of construction the incompatible land use issues of today are of great concern. Some of these issues have made it difficult for existing airports to gain approval for needed expansion, have delayed new airport development, and in some areas have resulted in legal actions to curtail and even eliminate aircraft

Guide to Community Planning in Wisconsin

operations. These land use concerns are valid, but they will continue to cause problems if the issue is not dealt with at the local level.

Planning for growth and change is the best way to provide for the future and make the most efficient use of existing airports. Airports should be considered not only in terms of its impact on transportation, but also in terms of the local economy, land use, and the environment. The airport should be considered as part of a total transportation plan to meet the community's needs. Especially important in this respect is access to the airport by road, rail, and mass transit where appropriate.

All Wisconsin airport owners should consider appropriate land use zoning controls prior to the development of land near the airport. Adequate safeguards must be incorporated early in order to prevent incompatible land uses from occurring along with the subsequent noise complaints that will be sure to follow. Land use controls will also provide space for future airport development and expansion. The impact of

aircraft noise is the principal consideration in developing compatible land use plans.⁴

Counties, cities, villages, and towns which own airports all have the same authority to zone the approaches to airports to protect them from incompatible uses.⁵ Counties, cities, villages, and towns may also establish airport affected areas up to three miles from the boundaries of an airport.⁶ These laws can establish land use criteria for areas adjacent to or near a public airport. In Wisconsin, the majority of zoning for uses compatible with an airport has been done separately by each jurisdiction with land in the airport area. This fragmented approach to zoning increases the difficulty of implementing an airport land use plan through zoning. Greater cooperation among the various units of government that are affected by an airport is necessary to insure protection of the public's investment in the facility.

Guide to Community Planning in Wisconsin

5. Endnotes

1. Driveway permits are issued under the authority of section 86.07(2), Wis. Stats. and TRANS 231 of the Wisconsin Administrative Code.
2. TRANS 231 of the Wisconsin Administrative Code.
3. For further information see **A Guide for Land Use Planning Around Airports in Wisconsin**, by Wisconsin Department of Transportation (1989).
4. Federal assistance is available and the process is outlined in **Federal Aviation Regulation Plan 150, Airport Noise Compatibility Planning**.
5. Wis. Stat. § 114.136. An airport approach protection zoning ordinance can be adopted, enforced, and administered without the consent of any other governing body.
6. Wis. Stat. § 66.31.

Chapter 10

NATURAL RESOURCES

Chapter 10

- 1. Natural Resources Management**
- 2. Floodplain and Shoreland Zoning**
- 3. Water Management Regulations**
- 4. Wastewater and Drinking Water Management**
- 5. Forest Lands Management**
- 6. Endangered/Threatened Species Management**
- 7. Solid and Hazardous Waste Management**
- 8. Mining Regulations**
- 9. State and National Riverways**
- 10. Wisconsin Environmental Policy Act**
- 11. Resource Materials**
- 12. Endnotes**

Abundant natural resources have been the foundation for Wisconsin's economy, industries, culture and ways of life throughout the state's history. The wood, water, wildlife, plants, soil and minerals of the region that is now Wisconsin sustained Native Americans for thousands of years before Europeans began arriving in the 1600's to tap those resources. For nearly two centuries, Wisconsin remained a wild territory inhabited by native tribes and foreign fur traders based at forts along major river ways. As the United States pushed west in the mid-1800's, newcomers from eastern states and other countries settled in Wisconsin. Minerals were mined, forests felled,

grasslands plowed, homes built and crops grown. Rivers became major transportation routes. Fish and wildlife were heavily harvested to sustain the growing population. New towns sprung up and older settlements expanded, trails became roads, river mouths became harbors, and streams were dammed for mills and power generation. The need for sanitary waste disposal and safe drinking water supplies greatly increased.

The strain on the region's natural resources was inevitable at a time when laws were few and the finite nature of then-abundant natural resources was not well understood. Early Wisconsin residents soon found that natural resources have limits. Today's conservation and environmental laws reflect the efforts of Wisconsin citizens over the many decades since to protect and manage the state's natural resources. These laws are intended to maintain the quality of Wisconsin's natural resources while allowing the economy to flourish.

1. Natural Resources Management

The Department of Natural Resources (DNR) is Wisconsin's lead agency for protecting and improving natural resources and the environment.¹ DNR employees are charged with:

- protecting Wisconsin's air, land and water; its fisheries, wildlife and natural communities;
- preventing and controlling pollution;
- enforcing conservation and environmental laws;

Guide to Community Planning in Wisconsin

- restoring and protecting habitat for fish, wildlife, plants, forests and native ecosystems; and
- maintaining parks, trails, hunting grounds and other recreation areas for the public's enjoyment.

The DNR carries out these responsibilities in conjunction with citizens, non-profit organizations, local governments, regional planning organizations, and other state and federal agencies. It is the DNR's job to balance conflicting uses today so quality natural resources are available in the future. The Natural Resources Board, a governor-appointed citizens board, has legal authority to set agency policy, recommend regulations for legislative action, approve property purchases and accept donations. The Natural Resources Board's monthly meetings are open to the public.²

To accomplish its mission, the DNR administers a number of programs that affect land use, either directly or indirectly. This chapter discusses some of the more significant programs with a relationship to land use. Other programs administered by the DNR are affected by the land use decisions made by others. While these programs are not discussed here, this relationship is important to recognize, because the decisions of others are often a major factor influencing the success of DNR programs.

1.1 DNR's Organizational Structure

Staff in the DNR's downtown Madison offices work with the Natural Resources Board to establish department policies and programs, administer state laws and rules, distribute community grants and loans, interact with the Governor, Legislature and other agencies, work with numerous interest groups, support DNR field responsibilities, and evaluate progress toward agency goals. These staff are organized in three media-based (land, water, and air and waste) and three programmatic (customer assistance and external relations, enforcement and science, and administration and technology) divisions.

More than two-thirds of the DNR's workforce is assigned to field offices in five administrative regions. Their work is further

subdivided into 23 geographic management units, represented in the map on page 203, whose boundaries roughly match the state's natural river basins and large waterways.

1.1.1 Geographic Management Units

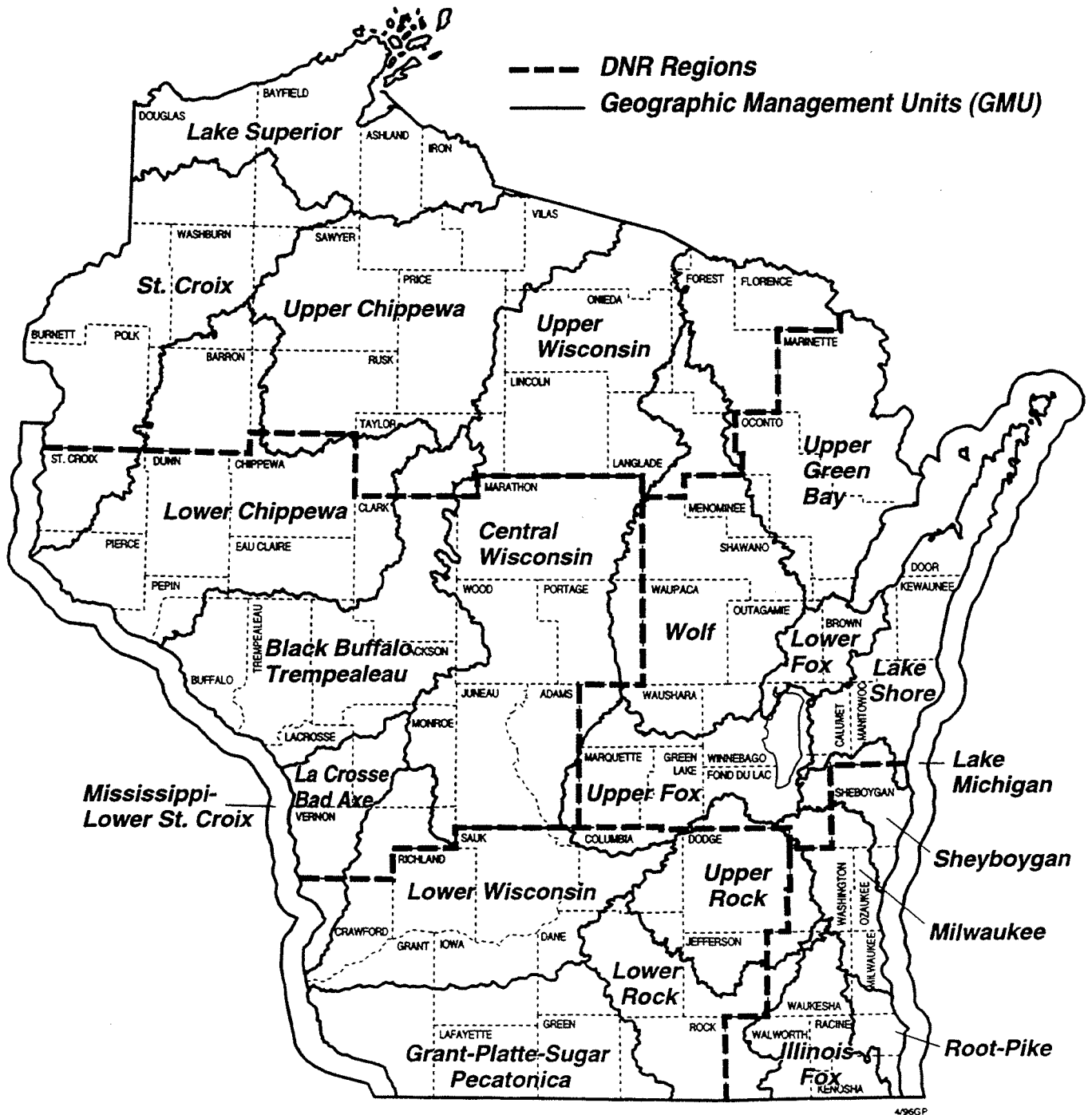
Staff in each geographic management unit (GMU) and region are responsible for defining the area's natural ecology and identifying threats to natural resources and the environment. Staff in these GMU's are the DNR's primary interface with citizens and local units of government. Each GMU has a team of land-based professionals (e.g., wildlife managers, foresters, park superintendents, etc.) and a team of water-based professionals (e.g., water quality biologists, fish managers, wastewater engineers, wetland ecologists, etc.). The GMU teams are led by water and land basin supervisors (GMU leaders) that have overall responsibilities for program implementation in their respective GMU's.

As part of its reorganization in the mid-1990's, the DNR formed partnership teams for each GMU. These citizen teams allow DNR staff to combine their efforts with county, city and town leaders; business owners; private home owners and other landowners; outdoor enthusiasts; young people and other state residents to manage public resources. These citizens groups are partners in assessing the status of resources in the GMU, identifying resource management and environmental protection priorities within the GMU, and assisting the DNR in program implementation.

One of the DNR's most important land use-related resources is its GMU staff. These field staff routinely represent the DNR in local land use activities. Their role in these activities is one of providing natural resources and environmental information, predicting impacts from various types of decisions, analyzing and suggesting alternatives, and being advocates for sound land use. For example, a wildlife manager and water quality planner actively participated in the development of one county's development management plan. Two GMU leaders assisted a group of five towns in another county begin a comprehensive planning processes. A DNR forester helped several towns identify significant natural communities within

Guide to Community Planning in Wisconsin

WDNR Geographic Management Units (GMU)



Guide to Community Planning in Wisconsin

their boundaries. These are only a few examples of GMU staff participation in local planning efforts.

1.2 DNR Property Acquisition and Management

The DNR owns and manages more than 1.2 million acres on behalf of Wisconsin citizens. These lands include state parks, state forests, state trails, state natural areas, state fisheries areas, state wildlife areas, and a variety of other resource lands. These lands are scattered throughout the state, providing a wide range of ecological and recreational opportunities. The department is authorized to acquire lands by gift, devise, purchase, and condemnation for public purposes.³ Most DNR-owned lands have been purchased from willing sellers using the state's Stewardship Program (see section 1.3 for more information on the Stewardship Program).

While use and management of DNR lands is geared towards conservation and outdoor recreation, the state's historic preservation statutes also apply to these lands. When acquiring and before transferring any property containing historic or archeological properties, the DNR must work with the State Historical Society to ensure protection of those resources.⁴ Several DNR properties have unique historical or archaeological features (e.g., High Cliff State Park, Aztalan State Park, and the Kettle Moraine State Forest).

1.2.1 Master Planning

Lands managed by the DNR are subject to a comprehensive property master planning process outlined in the state's administrative codes.⁵ A property's master plan spells out how the property will be managed, used and developed, how it will look and what benefits it will provide. The master plan identifies goals and objectives for the property, defines the recreational uses, forestry and other land management practices, and outlines other aspects of the property's future use and development. The master planning codes:

ensure that a uniform planning process for the management and use of DNR properties is used;

include specific procedures for the development, revision, amendment, implementation and review of DNR master plans;

outline a land management classification system for use in all DNR master plans;

establish minimum content requirements for DNR master plans; and

ensure that opportunities for public involvement are available in the development of master plan recommendations.

The first step in the property master planning process is to collect and review information about the property's and region's natural resources and pertinent socio-economic factors, including recreational use and demand. Then, with public involvement, the DNR identifies significant issues to be evaluated in the planning process. Next, based on this review and on the property's statutory designation (i.e. state park, state natural area, etc.), the DNR works with the public to develop draft goals, objectives and management alternatives. Finally, the DNR selects a preferred alternative, refines the alternative with public involvement, and submits a plan to the Natural Resources Board for review and approval.

Public involvement in the development, revision or amendment of a master plan is guided by a public involvement plan prepared prior to initiation of the planning process. Public involvement is important in identifying issues related to management and use of a property, shaping property goals and objectives, and outlining management and development alternatives. The planning process includes preparation of both a master plan and an environmental assessment document.⁶

1.2.2 Payments in Lieu of Taxes

Many people express concerns about lost taxes when the DNR proposes a property acquisition or expansion. However, the DNR makes payments to local governments to replace taxes that would have been paid had the DNR-owned property remained in private ownership and on the local tax rolls.⁷ These payments, known as

Guide to Community Planning in Wisconsin

"aid-in-lieu of taxes," are made to municipalities where the DNR owns land in fee title and where the DNR leases land from the federal government. Different tax rates apply, based on when the DNR acquired the land (Table 1).

Municipalities are required to redistribute the aid payments to the individual taxing

jurisdictions within their boundaries (e.g., cities redistribute funds to school and technical college districts, counties to sanitary districts, etc.). Aid-in-lieu payments change with changes in land values and tax rates within the municipalities.

Table 1. Rates for Aid-in-lieu of Taxes

<u>Purchase Date</u>	<u>Tax Rate</u>
Land acquired by the DNR prior to 7/1/69	DNR pays \$ 0.80 per acre
Land acquired after 7/1/69 and prior to 1/1/92	DNR pays based on local assessment of the following January 1, multiplied by county, local, and school tax rates for the year (i.e. 1992 payment in first year is equal to full property tax had property remained on tax roll). Amount decreases at rate of ten percent per year after initial payment. In tenth year, and every year thereafter, a payment of ten percent of the first year's payment, but never less than \$ 0.50 per acre is required.
Land acquired after 1/1/92	DNR pays based on adjusted and equated purchase price and tax rates set by all taxing jurisdictions within the municipality in the first year. In subsequent years, payment is based on reassessment of purchase price and new tax rates.

1.3 Stewardship Programs

The Warren Knowles-Gaylord Nelson Stewardship Program was established by the Legislature in 1989 to protect environmentally sensitive areas and maintain and increase recreational opportunities across the state.⁸ Through the Stewardship Program, the DNR administers grants to local governments and non-profit conservation organizations to acquire conservation and recreation lands. The DNR also acquires lands and easements for the state through this program.

Stewardship is currently funded through general obligation borrowing. The state sells bonds to investors to raise money, then pays back the debt with taxes that will be collected through the year 2010. The cost of the program is spread out over time and shared with future users of public lands and outdoor facilities. Stewardship

funds are distributed in 12 categories, assuring that the program's far-reaching goals will be met in a variety of ways.⁹ Each year the Stewardship Program distributes nearly \$23.1 million for land acquisition and recreation projects. Stewardship funds are often used by communities to help implement their land use, comprehensive, and outdoor recreation plans.

Authorization for the Stewardship Program ends on June 30, 2000. Discussions regarding renewal or modification of the program are underway. It is likely that the Legislature will consider options for a future Stewardship Program in 1999 or 2000.

Guide to Community Planning in Wisconsin

2. Floodplain and Shoreland Zoning

One of the regulatory areas where the DNR is most directly involved in local land use planning and decision-making is through administration of the state's floodplain and shoreland management programs. These programs are primarily implemented by local units of government, but the DNR provides minimum statewide standards, technical assistance and program oversight.

2.1 County, City and Village Floodplain Ordinances

Counties, cities and villages are required to adopt reasonable and effective floodplain zoning ordinances.¹⁰ These ordinances must be adopted within one year after hydraulic and engineering data adequate to formulate the ordinance becomes available. Although the DNR is responsible for providing program oversight and floodplain zoning maps to local governments, floodplain zoning is not an environmental protection program. It is designed to protect individuals, private property and public investments from flooding and flood damage.

Floodplain zoning maps identify areas where major floods occur. Regulations prohibit development in the most dangerous flood areas. In other flood areas, development which is built above flood levels and otherwise flood protected is allowed. For regulatory purposes a floodplain is generally defined as land where there is a one percent chance of flooding in any year (also known as the 100-year floodplain).

The DNR has made available a "Model Floodplain Zoning Ordinance" for communities working on ordinances.¹¹ In order to participate in the Federal Emergency Management Agency's National Flood Insurance Program, more than 480 Wisconsin cities and villages have enacted floodplain zoning ordinances that also comply with applicable federal standards.¹² A few other municipalities have adopted ordinances, but do not participate in the national insurance program.

2.2 Shoreland Management Zoning Ordinances

Because land uses in a watershed directly affect the quality of a water body, the state provides special protection for lands near lakes and streams. Each county is required to zone by ordinance all shorelands in its unincorporated areas.¹³ Ordinances enacted under the enabling statute supersede all provisions of ordinances enacted under a county's general zoning authority,¹⁴ and town approval is not required for county shoreland ordinances.

Shorelands include areas within 1,000 feet of a lake (including ponds and flowages) or 300 feet of a navigable stream (see part III of this chapter for a definition of "navigable stream"). General shoreland development standards are summarized in **Table 2**. Shoreland zoning ordinances may be more restrictive than minimum state standards, but not less. In addition, counties may permit only certain uses in wetlands of five acres or more within the shoreland zone. A "Model Shoreland Zoning Ordinance" is available from the DNR's Bureau of Watershed Management.¹⁵

Seventy of Wisconsin's 72 counties have adopted shoreland zoning ordinances. Milwaukee County, which is entirely incorporated, and Menominee County, which comprises the Menominee Indian Reservation, are not required to adopt shoreland zoning ordinances.

Guide to Community Planning in Wisconsin

Table 2.	General Shoreland Development Standards
Minimum lot sizes	100 feet minimum average width and 20,000 square feet for <i>unsewered</i> lots. 65 feet minimum average width and 10,000 square feet for <i>sewered</i> lots.
Setbacks	75 feet from ordinary high water mark for <i>all</i> structures except piers, boat hoists and boathouses. Decks, gazebos, screen porches and other accessory structures must be set back.
Shoreline vegetation	removal of vegetation limited in the 35-foot strip adjacent to the ordinary high water mark; no more than 30 feet in any 100 feet may be clear cut.
Filling and grading	permits required to avoid erosion and adverse effects on habitat and water quality.
Sanitary codes	permits and standards for sewage systems and wastewater disposal are required.
Subdivision review	review of plans for public roads, utilities, storm water drainage, erosion control, etc. to manage the environmental effects of residential development (generally, for higher density development , but in many counties, for single lots as well).

2.3 City and Village Shoreland Wetland Protection Ordinances

Cities and villages are required to zone all unfilled wetlands of five acres or more which are shown on DNR's final wetland inventory maps to be located within shorelands and are within the incorporated area.¹⁶ Ordinances adopted under a city or village's general zoning authorities¹⁷ may be more restrictive than wetland protection ordinances, but may not be less restrictive. A "Model Shoreland-Wetland Zoning Ordinance for Cities and Villages" is available from the DNR's Bureau of Watershed Management.¹⁸

Cities and villages are not required to adopt the general development standards required for counties. However, many municipalities choose to adopt similar regulations related to shoreline setbacks, lot size, construction site activities, and removal of shoreline vegetation. Shorelands which are annexed by a city or village must continue to comply with the county shoreland and wetland zoning regulations which were in effect on the date of annexation. Four hundred-twenty-two Wisconsin villages and cities

have adopted shoreland-wetland zoning ordinances.

In addition to the city and village shoreland wetland zoning ordinances, a variety of federal and state regulations apply to wetlands both within and outside of the shoreland zone (see Water Management Regulations section below).

Guide to Community Planning in Wisconsin

3. Water Management Regulations

The laws that govern the use of Wisconsin's waters and make them public resources have significantly influenced the nature of the state's landscape. These laws, known collectively as the "Public Trust Doctrine," affect landowners when they build near the water, and others when they fish, hunt, or watch the sunrise over a favorite lake. The state Constitution requires the Legislature to administer this "trust" for the benefit of the general public.

The Public Trust Doctrine is an important foundation for the state's floodplain and shoreland laws discussed above. The Public Trust Doctrine also protects public rights *in* navigable waters. Navigable waters are defined as waterways that have a bed (i.e. a bottom or channel) and enough water to regularly support navigation by a small craft. Navigation by canoe or skiff once each year during high water makes a stream navigable.

A navigable water must have a bed to distinguish it from land which is simply flooded during periods of high water. The bed of a navigable water is marked by the presence or action of water (e.g., by erosion, the absence of terrestrial vegetation, or the presence of aquatic vegetation). The edges of the bed are defined by the "ordinary high water mark," which separates lands exposed to water action from adjacent uplands. For some activities, the ordinary high water mark delineates the waterward limits of local zoning authority and the landward limits of DNR water regulation permit authority.

3.1 Water Management Permits

In order to protect public rights in navigable waters, the DNR has been given authority to issue permits affecting all navigable waters of the state.¹⁹ Most construction activities such as dredging and building bridges or breakwaters in lakes, rivers and streams require permits. This is also true for ponds and some streams which may be dry in parts of the year. Local and/or federal permits may be required in addition to state permits for a single project on some waters (e.g., those involving wetlands).

Local governments are not exempt from state permit requirements, although certain state and municipal highway projects are authorized by a different process.

Water management permits cannot be granted which would allow waters to be filled for private use. Generally, a waterfront property owner may fill to reclaim land lost to erosion from a major event, like a storm or ice heaving, if a permit is obtained promptly after the event. Land lost to gradual erosion over many years, however, may not be reclaimed.

Implementing Wisconsin's water laws is a major work activity of the DNR. For example, the agency received more than 1,480 and 1,605 permit applications in 1993 and 1994, respectively, for waterway projects which potentially affect adjacent land uses. These include such activities as bulkhead line ordinance establishment, bridge or culvert placement, dam construction, stream realignment, retaining wall construction, water diversion and pond construction.

3.1.1. Piers, Docks and Boathouses

The near-shore areas of lakes and rivers are important for recreational uses -- a principal reason why many people own waterfront property. These same areas are ecologically fragile, biologically productive and contribute to the overall natural beauty of our waters. Because of the opposing uses, regulations govern the type and amount of near-shore construction related to the storing and mooring of boats and other watercraft.²⁰ The regulations also describe separate near-shore areas, called riparian zones, where each waterfront property owner may place structures.

State laws generally restrict dock (pier and wharf) construction to dimensions necessary for mooring, loading and unloading watercraft. Generally, a pier extends perpendicular to the shoreline, and a wharf is parallel to and connected to the shore throughout its length. Permits from the U.S. Army Corps of Engineers are required for piers on designated federal waters such as the Great Lakes, Lake Winnebago and some major

Guide to Community Planning in Wisconsin

ivers. Local units of government may also regulate piers.

A boat shelter provides a covered berth for watercraft in the water. It may have a roof or canopy but no sides or walls and may include a boat lift. Boat shelters which are removed from waters seasonally (out from December 1 to April 1) do not require a DNR permit but must comply with the same general guidelines as piers. Permanent boat shelters require DNR permits and must comply with additional standards.²¹ The number of shelters per property is limited to one permanent and a total of two (including seasonal shelters) for the first 100 feet of shore frontage and an additional seasonal shelter for each additional 50 feet of shore frontage.

A boathouse differs from a boat shelter by having sides or walls as well as a roof. On land, boathouse construction is regulated by local ordinances and may be exempted from shoreline setback requirements. Over water, new boathouse construction is prohibited below the ordinary high water mark. Such "wet" boathouses constructed prior to 1979 are allowed to remain but the DNR and local governments regulate their repair and maintenance. In limited cases, a boathouse may be built over a boatslip which has received a DNR permit.

3.1.2. Dams

Water near dams can be hazardous to unwary boaters, anglers or other recreational users. The great energy stored in the water behind a dam can cause injuries and property damage if the dam fails. There are certain responsibilities and liabilities associated with dam ownership because of these dangers.

A buyer of property which a dam is located must show financial ability to maintain the dam.²² In addition, Wisconsin law requires a permit to transfer ownership of dams on navigable streams.²³ These requirements apply not only to properties where concrete or metal water level control structures are located but also to those containing any related earthen dikes. Both buyer and seller must cooperate to complete permit applications. Realtors, attorneys and lenders must advise their clients of these requirements. If dam transfer requirements are not met, the real estate

sale may be void.

Sometimes, dam owners or prospective buyers are reluctant or unable to pay for repair and maintenance of a dam. In these cases they may be eager to abandon the dam or transfer it to someone else to take care of it. On occasion, local anglers, boaters or water front property owners may be interested in saving the dam. In these cases, a lake district (see section 3.4 below) may be formed to finance dam ownership, repair and maintenance. If a buyer does not want a dam, the seller can apply to the DNR for a permit to abandon it. A public informational hearing²⁴ helps determine if the dam is worth saving and may help identify a party willing to own and maintain it.

Generally, if the DNR grants a permit to abandon a dam, the flowage must be gradually drawn down. All water level control structures and dikes must be removed from the stream channel and floodway. Removal of these structures can be costly. The DNR administers a cost-share financial assistance program to help with dam maintenance, repair, modification, abandonment and removal.²⁵

3.1.3. Other Water Regulation Laws

The DNR is responsible for administering a permit program for a variety of other activities that affect navigable waters. Some of these activities include: establishment of bulkhead lines, bridge construction, management of aquatic nuisance species, water diversions, stream channel changes and dredging projects. Those interested in knowing more about these laws or trying to determine which laws apply to a project can contact, the local DNR Water Management Specialist who can answer questions and help with the permitting process.

3.2 Wetland Regulations and Water Quality Standards

Wetlands are areas where water is at or near the ground surface long enough during the growing season to determine the types of plants that grow and influence the soils that form there.²⁶ These areas provide critical protection for lakes, rivers, streams and groundwater resources. They provide storm and flood water retention, pollutant

Guide to Community Planning in Wisconsin

and sediment trapping and erosion protection. Wetlands also provide valuable habitats for a variety of fish and wildlife species, offer educational and scientific opportunities, and contribute to Wisconsin's natural scenic beauty. Because of these many and diverse functions and values, wetlands are accorded protection by federal, state and local governments.

The DNR is required to prepare wetland inventory maps.²⁷ Wisconsin Wetland Inventory maps describe wetland boundaries and vegetation types. Most of Wetland Inventory maps cover a 36-square mile township and are produced on an aerial photograph at the 1" = 2000' scale. These maps can be a useful tool for identifying wetlands in your community.

The federal Clean Water Act regulates the placement of fill material into U.S. waters including all wetlands.²⁸ The regulations also apply to other activities that may damage wetlands such as draining, excavation, flooding and burning, if these activities could result in conversion of the wetland to some other use.

The federal wetlands regulations are jointly administered by the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (COE). The COE implements the wetland permit program and makes permit decisions consistent with EPA guidelines.²⁹ The EPA has veto authority over COE permits. Both the COE and EPA have authority to bring enforcement actions and to levy administrative civil penalties against violators of the wetland regulations.

The U.S. Fish and Wildlife Service and state natural resources agencies review COE permit applications and recommend measures to protect fish and wildlife resources and replace wetlands which may be lost due to development. The COE is required to consider these recommendations but is not required to implement them. The COE cannot issue a wetland fill permit, however, if the state has determined that a proposed project would violate the state's water quality standards for wetlands or its federally-approved coastal zone management plan. This provision provides a state veto over COE wetland permit decisions.

In Wisconsin, the DNR applies narrative

(rather than numerical) water quality standards for wetlands to all its actions potentially affecting wetlands. This may include planning, financial assistance and regulations.³⁰ These standards require an alternatives analysis and prevent destruction of wetlands by activities that are not wetland-dependent.

3.3 Erosion Control and Storm Water Management

Soil erosion continues to be one of the leading causes of water pollution in Wisconsin. While generally thought of as an agricultural or rural concern, polluted run off can also be a significant problem in urban and urbanizing areas. For example, one DNR study attributed 25 percent of sediment loading to urban areas in one northeast Wisconsin watershed. Construction site erosion was believed to contribute 70 percent of the urban sediment loading in this area.³¹

As more land is covered with pavement and buildings, an increasing volume of water floods creeks, streams and storm sewers instead of soaking into the soil to replenish groundwater. One study found that urban growth in a southern Wisconsin community was expected to increase storm water runoff 109 percent over current levels.³² Federal and state regulations have been passed to help address these concerns.

To meet federal requirements, the DNR has developed a state storm water management and permitting program. This program includes regulation of municipal and industrial storm water discharges and construction site erosion control for sites that disturb five acres or more.³³ The DNR and the Department of Commerce signed a memorandum of understanding on erosion control. The memorandum eliminates redundant regulatory requirements for construction sites and allows the Department of Commerce to administer and enforce erosion control at all commercial building sites. Under state law, counties are also authorized to enact ordinances to control construction site erosion at sites in unincorporated areas, if the sites are not for building construction or storm water management.³⁴ Similarly, cities and villages are authorized to enact construction site erosion control ordinances affecting their

Guide to Community Planning in Wisconsin

incorporated areas.³⁵ Adoption and implementation of such ordinances can greatly reduce the amount of pollutants entering lakes, streams and rivers from storm water runoff.

Stormwater management can be addressed during development of the public facilities element of a community's comprehensive plan. Planning to accommodate the stormwater from future land uses can be a first step in reducing polluted run off.

3.4 Inland Lake Protection and Rehabilitation Districts

Inland lake protection and rehabilitation districts (lake districts) are special purpose units of government administered by a local board of commissioners.³⁶ Lake districts have the authority to levy taxes, make special assessments, or charge user fees to finance lake management activities. A lake district can assume responsibilities for

ownership, repair, maintenance and operations of a dam. A lake district may also exercise the same powers as a sanitary district if authorized by the town which created the sanitary district. District voting members make major policy decisions at annual meetings. There are approximately 80 inland lake protection and rehabilitation districts throughout Wisconsin.

The DNR administers a number of financial assistance programs designed to assist lake districts in their planning and protection efforts.³⁷ These include Lake Planning Grants and Lake Protection Grants. Many lake districts and local governments have used these assistance programs to support land use planning and growth management efforts as a means of protecting lake water quality.

Guide to Community Planning in Wisconsin

4. Wastewater and Drinking Water Management

Wisconsinites have always valued the abundant water resources found in the state. Over the past several decades, the Legislature has passed a number of laws to protect and enhance management of Wisconsin's water resources. Because of the close relationship between land uses and water quality, several of Wisconsin's water quality protection and management programs affect the ways in which we use our land resources. Some of these protection and management programs can be incorporated into community planning efforts.

Nearly all types of development generate wastewater that must be managed, treated and disposed. Potable water is similarly a requisite for residential development and many commercial operations and industrial activities. As such, the availability of sewer and water service is often one of the factors determining where development occurs.

The DNR has approval authority for municipal wastewater collection and treatment systems, water mains, water well construction and pump installation, as well as septic and holding tank servicing. These authorities and the approval processes are spelled out in state statute and administrative codes.³⁸ Approvals are generally based on engineering criteria and least-cost alternatives for protecting water quality.

4.1 Sewer Service Area Plans

Many water quality concerns can be addressed by proactive planning. The DNR is responsible for conducting a continuing planning process to control water pollution, integrating technical measures for pollution abatement and making management arrangements necessary to implement those measures.³⁹ An important element of this process is community sewer service area planning.

Sewer service area plans are used to determine where a community's sewered development will occur. Sewer service areas are based on 20-year population estimates and determined in a manner that promotes cost-

effective and environmentally sound waste collection and treatment.⁴⁰ Major areas unsuitable for the installation of waste treatment systems because of physical or environmental constraints are excluded from sewer service areas. These areas are sometimes locally referred to as "environmentally sensitive areas" or "environmental corridors."

Sewer service area plans are developed locally. In areas of the state designated by the governor, designated area-wide water quality planning agencies (generally regional planning commissions) are responsible for preparing the plan. Currently, these areas include Dane County, southeastern Wisconsin and the Fox River Valley in the Northeast. In other areas, the DNR works with local governments to prepare sewer service area plans.

Sewer service area plans can be integrated with the public facilities and open space elements of a community's comprehensive plan. For example, wellhead protection areas (see below) and holding tank service areas can be identified in sewer service area plans. Areas identified in sewer service area plans as unsuitable for sewered development⁴¹ could be linked to a community's open space and outdoor recreation plans.

Sewer service area planning has generally been limited to areas with a population of 10,000 or greater. There are 153 sewer service areas in Wisconsin, covering 258 cities, villages, and towns. Some cities have more than one sewer service area, and some sewer service areas cover more than one jurisdiction. There are 130 sewer service areas, including 208 jurisdictions, in areas designated by the governor.

4.2 Wellhead Protection

Wellhead protection is a means by which a community can actively and efficiently protect its drinking water resources. Wellhead protection plans can be drafted through the efforts of citizens, local and state governments. Unlike many other programs, wellhead protection is preventative in nature; wellhead protection aims to

Guide to Community Planning in Wisconsin

prevent contaminants from entering the area of land around a public water supply well. This area includes the surface and subsurface area surrounding a water well or well field supplying a public water supply system, through which contaminants are reasonably likely to move toward and reach the well or well field. A wellhead protection area can be all or part of the area referred to as a recharge area for a given well.

There are six main steps to developing a wellhead protection plan for a community:

- 1) Determine the scale of the planning area: one well? all the wells in the municipality? all the municipal wells in a county/region?
- 2) Form a group of interested citizens, local planning and zoning officials, elected officials, and the water purveyors.
- 3) Delineate the land area to be protected.
- 4) Identify and locate potential contaminant sources within the wellhead protection area.
- 5) Assess the adequacy of existing programs to protect groundwater from identified contaminant sources.
- 6) Plan for the future. Develop local plans to establish zoning restrictions, ordinances and other programs to minimize the chances of future contamination.

Wellhead protection zones can be integrated with the public facilities element of a community's comprehensive plan. These areas can also be included in the areas designated unsuitable for sewered development in a community's sewer service area plan (see section 4.1 above).

Related to wellhead protection is the Source Water Assessment Program. The 1996 Amendments to the federal Safe Drinking Water Act require states to develop and implement a Source Water Assessment Program. The program must consist of the following:

- a delineation of source water assessment area boundaries for all public water systems;
- an inventory of existing and potential sources of contamination within those boundaries;
- an analysis of the susceptibility of the water

- systems to the contaminants; and
- public access to the assessments.

Plans for addressing each part of the program must be submitted to the EPA for approval in 1999. Included in Wisconsin's program will be more than 1,100 community wells, nearly 11,000 non-community wells, and 20 surface water systems operating in the state.⁴²

4.3 Nonpoint Source Water Pollution Abatement

The DNR, in cooperation with the Department of Agriculture, Trade and Consumer Protection (DATCP), administers the nonpoint source water pollution abatement program (also called the Priority Watershed Project program).⁴³ This program includes a planning phase which examines land uses, and provides cost-share money to landowners and local governments to help them implement best management practices to prevent polluted run off.

Of the 86 priority watershed projects initiated under this program, 24 are completed, 59 are in the implementation phase, and three are in the planning stage.

4.4 Clean Water Fund

The DNR administers the state and federal Clean Water Fund programs.⁴⁴ Through this program, the DNR provides grants and loans to municipalities and school districts to design and construct facilities to prevent and abate water pollution (generally wastewater treatment plants). The state lends money to municipalities at an interest rate that is lower than the market rate. The subsidized interest rate is intended to encourage action by municipalities.

Wisconsin's Clean Water Fund consists of two separate portfolios, each funded from different sources of money. The state program is called the leveraged portfolio. In this portfolio, state government funds the loan program with the proceeds from revenue and general obligation bonds, and then uses the principal and interest payments to repay the bonds. The federal side of the program is called the direct portfolio. Under

Guide to Community Planning in Wisconsin

the federal program, the state funds the program with a capitalization grant from the U.S. EPA and proceeds from general obligation bonds. In the direct portfolio, the repayments create a revolving fund of money lent to other municipalities in the future.

4.5 Sanitary and Metropolitan Sewerage Districts

Many wastewater and water quality issues can be addressed locally. Sanitary districts may be formed by town boards to plan, construct, and operate public water supply, sewage disposal, or solid waste collection facilities.⁴⁵ Districts may also harvest aquatic plants or treat waters for swimmer's itch or algae problems. The DNR can also order formation of sanitary districts, however, there is virtually no state oversight of the formation or expansion of sanitary districts. Sanitary districts are managed by local commissions which may levy special assessments and collect charges for activities and services.

Metropolitan sewerage districts (MSD's)

are created by an order from DNR as a result of a county, city, village, or town resolution, or by resolution of the common council of a first class city.⁴⁶ MSD's are special purpose units of government which plan, build, and operate systems to collect, carry, and dispose of all sewage and drainage of the sewerage service area, including storm water and groundwater. MSD's established by DNR include at least one entire municipality and all or part of other municipalities necessary for physical and fiscal management. The initial boundary of MSD's established by first class cities is the same as the county boundary of the county where the first class city is located. There are currently seven MSD's in Wisconsin, covering 19 cities and 28 villages.

The plans and activities of sanitary and metropolitan sewerage districts should be coordinated with sewer service area plans and other elements of community comprehensive plans.

Guide to Community Planning in Wisconsin

5. Forest Lands Management

Approximately 16 million acres of forest currently exist in the state (forty-six percent of Wisconsin). Forestry is the second largest industrial sector in Wisconsin; involving more than 1,500 companies and more than 84,000 employees, it surpasses agriculture and recreation.⁴⁷ When secondary industries are considered, it has been estimated that more than 305,000 persons are employed by the forest products industry.⁴⁸ How we manage forest lands has significant impacts on local and regional economies, native biological diversity, water quality and regional character. In addition, development patterns within forest areas can affect the ability of local governments to provide services, such as adequate police and fire protection. Communities can proactively address these issues by incorporating, or at least considering, forest management in their land use planning activities.

5.1 Forest Land Tax Programs

The vast majority of forest land is in private ownership. Owners of private forest lands can participate in deferred tax programs under Wisconsin's tax laws.⁴⁹ Voluntary participation in these programs requires that private landowners follow "sound forestry practices" as prescribed in a formal management plan or, as in the case of industrially owned lands, a management commitment.⁵⁰ Currently, over 2.5 million acres are enrolled in these tax programs statewide.

There are three separate, but similar in purpose, tax law opportunities. These laws are typically referenced as the Forest Crop Law (FCL), the Woodland Tax Law (WTL), and the Managed Forest Law (MFL). Lands enrolled in these programs are committed for a management period of 25 or 50 years in FCL and MFL, or 15 years in WTL. The MFL is the most recent law and is intended gradually to replace WTL and FCL. The MFL is the only law that allows for current entry; however, the purpose embodies the intent of all three and is stated in the law as:

... to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.⁵¹

Encouraging enrollment under the MFL is one step communities can take to help implement the open space elements of land use plans.

5.2 County Forest Master Plans

Twenty-eight northern Wisconsin counties own and manage nearly 2.25 million acres of county forest lands.⁵² In 1963, the Wisconsin Legislature amended the County Forest Law to require counties to develop comprehensive land use plans for a 10-year period.⁵³ The law allows for technical assistance from DNR and other interested agencies. The law describes the purposes of the county forest 10-year plans as:

To provide the basis for a permanent program of county forests and to enable and encourage the planned development and management of the county forests for optimum production of forest products, together with recreational opportunities, wildlife, watershed protection and stabilization of stream flow, giving full recognition to the concept of multiple use to assure maximum public benefits; to protect the public rights, compensate the counties for the public uses, benefits and privileges these lands provide; all in a manner which will provide a reasonable revenue to the towns in which such lands lie.

Although all 28 county forests are located throughout the northern half of the state, they have vast differences in forest types, flora, fauna, geology, demographics, economics, and cultural influences. Management goals on each county forest are aimed at providing multiple uses and

Guide to Community Planning in Wisconsin

public benefits such as economic revenues to towns and counties, optimum production of forest products, provision of recreational use opportunities, management of wildlife and its habitat, and protection of watersheds. The current 10-year plans, covering the period 1996-2005, serve as a general guide to achieve these purposes for each county forest. Specific goals and management strategies for forests may be different, reflecting the individual capabilities of each to provide these benefits.⁵⁴ For instance, timber production goals may differ according to variances in timber types and acreages; recreation goals may differ based on local demands and the physical ability of each forest to meet those demands; wildlife management goals may differ with habitat types, and so on. Local units of government with county forest lands should consider the forest master plans when preparing land use and development plans.

Guide to Community Planning in Wisconsin

6. Endangered and Threatened Species Management

Ecological systems remain healthy only if a diversity of plants and animals can survive and reproduce. Ecologists have long understood the importance of "keeping all the pieces." Yet, humans are sometimes unaware of the many economic and health benefits we receive as a result of the existence of diverse natural communities. The Legislature recognized this importance in 1977, saying:

...the activities of both individual persons and governmental agencies are tending to destroy the few remaining whole plant-animal communities in the state. Since these communities represent the only standard against which the effects of change can be measured, their preservation is of the highest priority.

Since 1973, federal and state laws have enabled the DNR to preserve endangered animals. A 1978 state law extended this protection to include threatened animals and endangered and threatened plants. Endangered species are at risk of becoming extinct in the state. Threatened species are those which are in risk of becoming endangered.

Wisconsin law also authorizes the DNR to "conduct investigations of nongame species in order to develop scientific information relating to population, distribution, habitat needs, and other biological data in order to determine necessary conservation measures." On the basis of these scientific determinations, the DNR may promulgate rules and develop conservation programs designed to ensure the continued ability of nongame species to perpetuate themselves.⁵⁵

6.1 Protection of Endangered and Threatened Species

Under Wisconsin law,⁵⁶ it is illegal to take, transport, possess, process or sell any wild animal that is included on the endangered and threatened species list without a valid permit. In addition, no one may process or sell any wild plant that is a listed species without a valid permit. On

public lands or lands you do not own, lease, or have the permission of the landowner, it is illegal to cut, root up, sever, injure, destroy, remove, transport or carry away a listed plant without a permit. There is an exemption to this latter provision on public lands for forestry, agriculture and utility activities. Prior to 1996, Wisconsin law completely prohibited the taking of listed species. In April 1996, the law was amended to allow for the incidental taking of state-listed species.⁵⁷ Under this new law, the DNR must review proposals for incidental taking and must conclude that the taking will not appreciably reduce the likelihood of the survival and recovery of the endangered or threatened species in question, the plant and animal community it is a part of, or the habitat critical to its existence in the state. The provision does not apply to species that are federally-listed and which fall under the auspices of federal processes.

6.2 Natural Areas Program

Wisconsin's Natural Areas Program is responsible for locating and preserving a system of state natural areas harboring all types of biotic communities, rare species and other significant natural features native to Wisconsin. State Natural Areas are formally designated sites devoted to scientific research, the teaching of conservation biology, and especially to the preservation of their natural values and biological diversity for future generations. They are not intended for intensive recreational uses like picnicking or camping.

Staff in the Bureau of Endangered Resources oversee all aspects of the Natural Areas Program in consultation with the Natural Areas Preservation Council. The Council, formerly called the State Board for the Preservation of Scientific Areas, was established in 1951. This group serves as an advisory body to the DNR. Its eleven members, drawn from the scientific and educational community, guides Natural Areas Program staff in identifying, managing and protecting state natural areas.

Protection is accomplished using a variety

Guide to Community Planning in Wisconsin

of tools, including acquisition, donations, and conservation easements. Sites on state-owned lands, especially parks, forests, and fish and wildlife areas, can simply be designated state natural areas by cooperative agreements and management plans between the Natural Areas Program and the cooperating DNR program. Similarly, areas controlled by universities, federal agencies, and private groups, such as the Nature Conservancy, are brought into the natural areas system by a memorandum of understanding -- a long-term, but not legally-binding, commitment to maintain the sites as natural areas. Sites not owned by the state are purchased from willing sellers using funds from the Stewardship Program (see section 1.3 above).

Guide to Community Planning in Wisconsin

7. Solid and Hazardous Waste Management

7.1 Solid Waste Management Planning

County solid waste management boards are authorized to develop plans for a solid waste management system. These plans must be consistent with criteria detailed in administrative code and must be reviewed by the DNR.⁵⁸ The provisions of solid waste management plans should be considered when developing community comprehensive plans, since all forms of development generate solid waste which must be managed.

The DNR has approval authority for design and location of landfills and other solid and hazardous waste facilities.⁵⁹ Location of these facilities should be consistent with a community's land use plan and zoning ordinances. A community's land use plan should consider the future use of solid waste sites as they project where various land uses will go.

7.2 Contaminated Lands ("Brownfields") Remediation

Many urban areas have former industrial sites or other sites where contamination is present. Some of these sites are tax delinquent. Often these "brownfields" could be remediated and redeveloped to accommodate inner-city growth. Focusing development on these sites maximizes the use of existing infrastructure, reduces costs of added services, and helps curtail urban sprawl.

7.2.1 Brownfields Financial Assistance

The DNR administers a number of financial assistance programs to aid individuals and communities in remediating contaminated properties. For example, the \$ 20 million Land Recycling Municipal Loan program is available to municipalities to assist in remediation of municipally-owned contaminated properties or facilities.⁶⁰ To be eligible for the program, the site contamination, with the exception of landfills, cannot be caused by the municipality. The loan interest rate is 55 percent of the market interest rate. Only 40 percent of the available funds in any

fiscal year can be directed towards landfill remediation, and loan amounts to a single community can not exceed 25 percent of the total program allotment for that fiscal year. Awards are based on the potential of the project to reduce environmental pollution and threats to human health.

Another program the DNR manages is a reimbursement program for the investigation and cleanup costs of dry cleaning facilities.⁶¹ Under this program, dry cleaner owners and operators must submit an application in order to participate. The DNR determines the order of awarding reimbursements, with at least 9.7 percent of the available funds in any fiscal year going toward immediate response actions.

There are also a number of financial assistance programs administered by other state agencies that can be used to remediate contaminated lands. For example, the Department of Commerce administers a \$10 million Brownfield Grants Program. The program covers expenses for demolition and rehabilitation of public and private facilities, as well as site investigations and clean ups. Under this program, at least seven communities with a population under 30,000 must be awarded grants. Cash or in-kind matches of various percentages are required for the grants.

There are also a number of tax programs that can be used to aid site redevelopment. For example, a 50 percent tax credit for remediation costs is available in development opportunity zones, development zones, and enterprise development zones. This program expands the tax credit from 7.5 percent.⁶² Under another program, a municipality can establish tax increment financing on a property that they owned and cleaned up.⁶³ Once the property is sold, a tax increment based on the new value of the property is allocated to payback the municipality for the clean up expenses.

The DNR and Department of Commerce have jointly published *The Financial Resource Guide for Redevelopment*.⁶⁴ This document describes various programs communities and

Guide to Community Planning in Wisconsin

individuals can tap into. The document outlines who is eligible for each program, specifies how much money is available, and provides contacts for further information.

7.2.2 Civil Protections

Liability associated with contamination has been a major roadblock to brownfield redevelopment. The Lands Recycling Law of 1994 encourages redevelopment by limiting liability of purchasers, municipalities, lenders, trustees, and administrators of probate estates from certain parts of the Hazardous Substance Discharge Law (spills law). For example, if a local governmental unit acquires property through tax delinquency proceedings from a county that used tax delinquency proceedings, as the result of an order by a bankruptcy court, through condemnation, or other proceedings under Wis. Stats. ch. 32, the local governmental unit is immune from civil liability related to a hazardous substance discharge on or from the property if it no longer owns or controls the property.⁶⁵ Similarly, the DNR is authorized to issue written commitments of no legal or administrative action to the owner of properties contaminated by off-site discharges in the soil or groundwater, where the owner can substantiate that the source is not from his property.⁶⁶ The DNR can assess fees for this work. Other provisions of state law provide various levels of legal protection. There is no concurrent federal limit on liability at this time.

For more information on these programs, contact the DNR's Bureau of Remediation and Redevelopment.

7.3 Petroleum Environmental Cleanup Fund Award (PECFA)

The Wisconsin Department of Commerce administers the PECFA program, which provides partial funding to remedy environmental contamination from petroleum product storage.⁶⁷ Included in the coverage are storage tank systems containing gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel, and used motor oil. Many underground and above-ground storage systems are covered, along with their on-site integral piping and dispensing components. Some of the costs covered include investigating contamination sources, preparing remediation alternatives, removing contaminated soils, removing contaminants from surface and groundwater, contractor and subcontractor costs for remedial action, and compensating third parties for bodily injury and property damage. The Department of Commerce coordinates this program with the DNR, which has responsibilities related to remediating contaminated sites.

Guide to Community Planning in Wisconsin

8. Mining Regulations

Wisconsin has abundant mineral resources. Mining has been an important part of Wisconsin's history and economy since the earliest days of Euro-American settlement. Mineral resources can be categorized as non-metallic (e.g., sand, gravel, and limestone) and metallic (e.g., copper, zinc, and gold). Nonmetallic and metallic mineral mining are regulated under separate state statutes.

8.1 Nonmetallic Mining

Nonmetallic mining is a widespread activity in Wisconsin. The variety of geologic environments present in the state provides for a diverse industry. An estimated 2,000 nonmetallic mines provide aggregate for construction, sand, gravel, and crushed stone (limestone and dolomite) for road building and maintenance, as well as for agricultural lime. A smaller number of quarries provide dimension stone for monuments, volcanic andesite for shingles, peat for horticulture and landscaping, and a considerable variety of materials for other uses.

Wisconsin law requires the DNR to promulgate rules to implement the nonmetallic mining reclamation program.⁶⁸ The overall goal of the regulations is to provide a framework for statewide regulation of nonmetallic mine reclamation. The rules do this by establishing uniform reclamation standards and setting up a locally administered reclamation permit program. Under the law, the DNR is required to write a model ordinance for use/adoption by counties and interested municipal governments.

All counties are required to adopt an ordinance that establishes a reclamation program capable of ensuring compliance with the uniform state reclamation standards contained in the rule. Cities, villages, and towns may choose to adopt the ordinance and administer a program within their jurisdiction. An ordinance must be enacted within six months of the effective date of the adopted DNR rules.

State law provides for the registration of land which contains economically viable

(marketable) nonmetallic mineral deposits. Registration should encourage the identification, preservation, and planning for ultimate development of marketable deposits. Registration is also intended to prevent future land uses such as erection of permanent structures that would interfere with future mining of a nonmetallic mineral deposit. However, the registration of nonmetallic mineral deposits may not prevent any land use that was permitted under the current zoning the day before a site was registered.

Land use planning, zoning, and the registration process are interrelated. When land use plans are prepared, the location and development of registered nonmetallic mineral deposits should be considered. Zoning officials may object to a proposed registration of land which contains a nonmetallic mineral deposit if it is not marketable, or if the existing zoning prohibits mining. If the zoning officials chose to object, they bear the legal burden to provide sufficient evidence to support their objection in court. Zoning cannot be changed to prohibit mining of a registered deposit during the registration period. However, if the land owner does not proceed to develop the deposit while the land is registered, the zoning may be changed in accordance with a lawfully adopted land use plan. Such a zoning change becomes effective upon the expiration of the site registration.

8.2 Metallic Mining

Wisconsin's mining statutes designate the DNR as the primary state agency responsible for regulating metallic mining activities.⁶⁹ The statutes and administrative codes refer to mining metallic minerals such as iron, copper, zinc, lead, silver, and gold. Mining activities include exploration for minerals, prospecting (large quantity sampling for bench-scale and pilot plant-scale tests), mining, and reclamation. The majority of the DNR's effort in mining involves reviewing mining permit applications, assuring that a proposed mine would comply with all environmental protection requirements, and, after a mine is approved, monitoring construction, mining, and reclamation activities.

In recent years, there has been one

Guide to Community Planning in Wisconsin

operating metallic mineral mine in Wisconsin, the Flambeau Mine in Ladysmith. Permitted in January 1991, this small, open pit copper mine began ore production in early 1993 and is already ending production. Reclamation of the Flambeau site was completed in 1999.

DNR staff are guided and constrained by the metallic mining statutes and other applicable statutes and administrative codes, and must apply the laws of the state in reviewing mining proposals and regulating metallic mining. A typical metallic mine proposed in Wisconsin would be regulated under the metallic mining law, as well as the more general regulatory programs such as those for wastewater treatment and discharge, air pollution control, solid waste disposal, and groundwater withdrawal (due to dewatering the mine). Most of these permits, approvals and licenses are not specific to metallic mining projects. The DNR reviews mining proposals using the same standards and criteria as municipal or industrial proposals except in the case of wetlands.

Due to recent rule revisions, groundwater protection requirements for metallic mining sites are contained in the same administrative codes⁷⁰ as the requirements for all other facilities. The point of standards application for groundwater quality for a mining facility is farther from the facility than for other regulated facilities in the state.

For wetlands analysis, the codes provide very specific criteria on how wetlands are to be characterized and protected.⁷¹ The presence of wetlands at a potential mining site will not necessarily prevent development for mining. However, the mining law mandates that any impacts to wetlands must be minimized.

In addition to the above regulatory review, a proposed metallic mine in Wisconsin requires a metallic mining permit and approved plans for environmental monitoring, mining, and reclamation, a risk assessment and a contingency plan. These approvals must be obtained prior to mine construction. A metallic mining applicant must establish an irrevocable trust fund to ensure that financial resources are available to address any unforeseen environmental events. The DNR also prepares an environmental impact statement

(EIS) on the mining proposal, in order to evaluate the environmental impacts, consider alternatives which could minimize negative impacts, and involve the public in reviewing the proposal.

The scope of the DNR's review of metallic mining projects is very broad, and the review process is comprehensive. Many consider Wisconsin's metallic mining regulations to be among the toughest. However, there are several features of the laws which are apparently poorly understood by the general public. For example, if a proposed mine is found to meet all environmental protection standards, comply with all applicable laws, receive local zoning approval, and minimize impacts to wetlands, the DNR *must* issue a mining permit. The laws do not allow the DNR the option of denying a mining permit under such circumstances. Public acceptance of a proposed metallic mine cannot be considered by the DNR in reviewing a mining proposal. Conversely, if a DNR review concludes that any of the applicable laws and codes could not be met by a proposed metallic mine, then the DNR cannot issue a mining permit. Basically, the law says that mining is acceptable if the environment will be adequately protected during and after the project.

8.2.1. Local Zoning Approval of Mining

The mining statutes make it clear that a local municipality within which a metallic mine site is located -- whether a town, city, village, county, or tribal government -- has zoning approval authority over a proposed metallic mine. Before a proposed metallic mine can receive state authorization, the local municipality must have granted its approval under its zoning or land use ordinances or have entered into a legally binding agreement (a local agreement) with the mining proponent. Local municipalities have other authorities related to mining as well, such as signing exploration and mining leases on public lands and withdrawing public lands for mining.

Guide to Community Planning in Wisconsin

9. State and National Riverways

Wisconsin is fortunate to have extensive stretches of riverway that remain relatively undeveloped. These areas are not only scenic, but provide some of the state's finest recreational assets. Federal and state laws designate two of these areas as scenic riverways.

9.1 Lower Wisconsin State Riverway

The Legislature created the Lower Wisconsin State Riverway in southern Wisconsin in 1989. The state law gives the Natural Resources Board responsibility for designating lands to be included in the riverway and requires the DNR to publish a map and description of the riverway.⁷² Lands within the Lower Wisconsin Riverway District are to be maintained and protected to promote the physical and aesthetic characteristics of the riverway through permitting and purchase of riverway lands.⁷³ The DNR has acquired a number of properties in the riverway corridor.

9.2 Lower St. Croix National Scenic Riverway

The lower St. Croix River, between the dam near St. Croix Falls and its confluence with the Mississippi River in northwestern Wisconsin, constitutes a relatively undeveloped scenic and recreational asset. The Wisconsin Legislature determined that preservation of this unique resource is in the public interest, and directed the DNR to develop guidelines for the protection and management of the riverway corridor.

Counties, cities, villages, and towns within the area affected by guidelines are required to adopt ordinances that conform to DNR standards.⁷⁴

Guide to Community Planning in Wisconsin

10. Wisconsin Environmental Policy Act (WEPA)

The Wisconsin Environmental Policy Act (WEPA) is a state law designed to encourage environmentally sensitive decision making by state agencies. Signed into law in 1972, WEPA spells out the state's environmental policy and requires the DNR and other state agencies to consider the environmental effects of their actions *to the extent possible* under their other statutory authorities.⁷⁵ It also establishes the principle that broad citizen participation should be part of environmental decision-making. WEPA imposes procedural and analytical responsibilities on the DNR and other agencies but does **not** provide authority to protect the environment. While this law does not apply to local government decisions, local projects involving state financial assistance or regulatory oversight are affected by it. In addition, many citizens are interested in the environmental impact documents prepared for various projects.

WEPA requires the DNR and other state agencies to gather relevant environmental information and use it in their decision-making. Agencies must also look at appropriate alternatives to the particular course of action they are proposing. If the action is a "major action significantly affecting the quality of the human environment," the law requires agencies to consult with other agencies about possible environmental impacts, prepare and circulate an environmental impact statement (EIS), and hold a public hearing.

The WEPA process has evolved substantially since its inception. Because the WEPA law lacks procedural guidance, much of the current process has been developed in response to various court decisions. For example, environmental assessments (EA's) are a creation of the courts, having arisen out of a perceived need for agencies to document their decision's not to prepare EIS's. EA's are similar to EIS's in both content and process. Both describe the proposal and the affected environment and both analyze the environmental impacts and possible alternatives. And, both EA's and EIS's are publicly noticed. The primary difference is the requirement for a formal administrative hearing on an EIS. The

DNR's procedures for implementing WEPA are described in detail in administrative code.⁷⁶

WEPA applies only to the actions of state agencies. The law does **not** apply to local governments or private parties unless their actions involve state agency regulation or funding. Application of the law in state agency decision making has limitations. For example, while the DNR has substantial authorities to regulate environmental pollution and alterations to waterways, the standards the DNR can apply in exercising these authorities are defined in the various regulatory statutes and related administrative rules. For many DNR permit programs, these standards do not include social or economic concerns. Nor do these standards allow the DNR to substitute an alternative to what is proposed. An important result of the lack of DNR discretion in making decisions on environmental permits is this: *The DNR does not have the legal authority to direct a project proponent to a particular site or to assure that the "best" site is selected for a project. This lack of authority applies to landfills, incinerators, shopping malls, residential developments, factories, and most other types of development.* In simplest terms, the DNR has limited authority for deciding the appropriate use(s) of land. This responsibility, to the extent it has been established at all, resides with other units of government, typically local municipalities.

The public often seems to believe a particular problem would be solved if only the DNR would prepare an EIS. These "particular problems" are usually some type of unwanted project being proposed for the neighborhood - a landfill, a shopping mall, or an industrial facility, for example. In reality, WEPA provides an informational process - EIS's (and EA's) disclose impacts and look at alternatives. They do not stop projects; they do not approve projects; they do not modify projects. They inform decision makers. The influence this informational function has on a decision is directly related to the amount of discretion DNR has in making that decision. To quote from a recent court case, "WEPA does not

Guide to Community Planning in Wisconsin

mandate particular results or particular decisions in individual cases but simply exists to ensure that adverse environmental effects of a particular project are identified and evaluated during the planning stages. The act does not prohibit unwise decisions, only uninformed ones.”

In the more than twenty years since WEPA became law, the DNR's experience has consistently reinforced the following conclusion: Involvement early in project development is the most effective way to stimulate environmentally sensitive planning and avoid or minimize adverse environmental effects. Preparing EA's or EIS's late in the project planning and design process is usually ineffective in achieving meaningful environmental protection.⁷⁷

Guide to Community Planning in Wisconsin

11. Resource Materials

NATURAL RESOURCES MANAGEMENT

Report on Payment in Lieu of Real Estate Taxes. DNR. (Published annually.)

To obtain a copy, contact the DNR's Bureau of Facilities and Lands, P.O. Box 7921, Madison, WI 53707-7921.

Directory of State and Federal Financial Assistance Programs Administered by the Department of Natural Resources. DNR.

To obtain a copy, contact the DNR's Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707-7921.

WATER MANAGEMENT REGULATIONS

Wisconsin Water Law: A Guide to Water Rights and Regulations, by Paul Kent (UWEX Publications, 1994).

Floods Affect Your Property. DNR. 1984. (WDNR 14-3500[84]).

Life on the Edge...Owning Waterfront Property by Michael D. Dresen and Robert M. Korth. UWEX. 1994.

Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications by Thomas W. Bernthal. DNR. 1997. (PUBL-WT-505-97).

Shoreland Management Program Assessment by Thomas W. Bernthal and Susan A. Jones. DNR. 1997. (PUBL-WT-508-97).

Law of the Land: A Citizen's Guide... Influencing Local Land Use Decisions that Affect Water Quality by Michael D. Dresen and Rita M. Kozak. UWEX and DNR. 1996.

Pier Planner. DNR. 1993. (WZ-017 93).

Guidelines for Marinas and Similar Mooring Facilities. DNR. 1993.

Buying or Selling Property with a Dam. DNR. 1989. (WZ-010 89).

Building Near Wetlands...the Dry Facts. DNR. 1991. (PUBL-WZ-WX021 91/JG WZ41 91).

A User's Guide to the Wisconsin Wetlands Inventory. DNR. 1991. (JG-WZ71 91).

Wisconsin Wetland Inventory Classification Guide. DNR. 1992. (PUBL-WZ-WZ023).

Wetland Functional Values. DNR. 1993. (WZ-026 93).

Water Quality Standards for Wisconsin's Wetlands: The NR 103 Decision Process. DNR. 1992. (WZ-025 92).

To obtain a copy of any of these reports, contact the DNR's Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707-7921.

WASTEWATER AND DRINKING WATER MANAGEMENT

What is a Sewer Service Area? by Roger Shores and Jordana Lenon. DNR. (PUBL-WR-431-96).

Wisconsin Wellhead Protection News.

FOREST LANDS MANAGEMENT

Basic Features of Wisconsin's Forest Tax Laws. DNR. 1994. (PUB-FR-098 94).

Wisconsin's Managed Forest Law. DNR. 1994.

Wisconsin Woodlands: The Woodland Tax Law and the Forest Crop Law by Jerry Lapidakis, Arian Wooden and Gordon Cunningham. UWEX. 1981. (G1549).

Guide to Community Planning in Wisconsin

For additional information on Wisconsin's forest tax law programs, contact the DNR's Bureau of Forestry, P.O. Box 7921, Madison, WI 53707-7921.

ENDANGERED/THREATENED SPECIES

Wisconsin Endangered and Threatened Species Laws and List. DNR. 1997. (PUBL-ER-001 97REV).

SOLID AND HAZARDOUS WASTE

Summary of Wisconsin's New Brownfields Programs and Initiatives. DNR. 1997. (Publ. RR-563-97).

Recycling Contaminated Lands in Wisconsin. Fact Sheet 2. DNR. 1995. (Publ. SW-506-95).

The Financial Resource Guide for Redevelopment. DNR and Wisconsin Department of Commerce. 1998. (Publ. RR-539-98-REV).

MINING (METALLIC AND NONMETALLIC)

A Brief Summary of Wisconsin's Nonmetallic Mining Reclamation Program. DNR. 1998 (PUBL # WA-828-98).

Registration of Nonmetallic Mineral Deposits. DNR. 1998. (PUBL # WA-825-98).

Improvements in Wisconsin's Nonmetallic Mining Reclamation Program. DNR. 1998. (PUBL # WA-827-98).

An Overview of Metallic Mineral Regulations in Wisconsin by Thomas Evans. Wisconsin Geologic and Natural History Survey, Madison. *Special Report 13.* 1991 (rev. 1996).

The DNR has also prepared a series of mining information sheets to explain how mining in Wisconsin is regulated and to explore other aspects of mining. Copies of the following mining information sheets are available from DNR offices in Madison and Rhinelander:

How the Department of Natural Resources Regulates Mining; How a Mine is Permitted; Protecting Groundwater at Mining Sites; Reclamation and Long-Term Care Requirements for Mine Sites in Wisconsin; Wisconsin's Net Proceeds Tax on Mining and Distribution of Funds; Local Decisions in Mining Projects; Potential Mining Development in Northern Wisconsin; Cumulative Impacts of Mining Development in Northern Wisconsin; Responses to Public Concerns with Wisconsin's Laws Governing Mining.

WISCONSIN ENVIRONMENTAL POLICY ACT

A Citizen Guide to the Role of the Wisconsin Environmental Policy Act in DNR Decision-making. DNR (no date).

Guide to Community Planning in Wisconsin

12. Endnotes

1. Wis. Stats. § 23.09, § 23.11, § 29.174, § 144.025(2), and § 144.431.
2. Wis. Stat. § 15.34. For a schedule of future Natural Resources Board meetings, information on meeting locations, or questions regarding agenda items, please contact the DNR at (608) 267-7420.
3. Wis. Stats. § 23.09, § 23.11, § 23.29, § 27.01, § 28.02, and § 227.11(2)(a).
4. Wis. Stats. § 40.39, § 40.40, and § 40.41.
5. Wis. Adm. Code NR 44.
6. Environmental assessment documents are prepared consistent with Wis. Adm. Code NR 150 and the Wisconsin Environmental Policy Act, Wis. Stat. § 1.12.
7. Wis. Stats. § 70.113 and § 70.114 and Wis. Adm. Code NR 50.
8. Wis. Stats. § 20.866, § 23.0915, § 23.092, § 23.094, § 23.096, § 23.175, § 23.27, § 23.29, § 23.293, § 23.294, and § 30.277, and Wis. Adm. Codes NR 50 and NR 51.
9. Stewardship funds are currently distributed in the following categories (dollar figures are the authorized annual spending levels): 1) general land acquisitions (\$6.7 million); 2) recreational development (\$3.5 million); 3) local park aids (\$2.25 million); 4) Lower Wisconsin River (\$2 million); 5) urban rivers (\$1.9 million); 6) natural areas (\$1.5 million); 7) habitat restoration areas (\$1.5 million); 8) trails (\$1 million); 9) streambank protection (\$1 million); 10) urban green space (\$750,000); 11) Ice Age Trail (\$500,000); and 12) natural areas heritage match grants (\$500,000).
10. Wis. Stat. § 87.30 and Wis. Adm. Code NR 116.
11. For a copy of the "Model Floodplain Zoning Ordinance," contact the DNR's local water management specialist or call (608) 266-1926.
12. To obtain copies of floodplain/flood insurance rate maps for your area, contact the National Flood Insurance Map Service Center, P.O. Box 1038, Jessup, MD 20794-1038 or by calling (800) 358-9616.
13. Wis. Stat. § 59.971 and Wis. Stat. § 144.26.
14. Wis. Stat. § 59.97.
15. For a copy of the "Model Shoreland Zoning Ordinance," contact the DNR's local water management specialist or call (608) 266-1926.
16. Wis. Stats. § 61.351, § 62.231 and § 144.26.
17. Wis. Stat. § 62.23 or § 61.35.
18. For a copy of the "Model Shoreland-Wetland Zoning Ordinance for Cities and Villages," contact the DNR's local water management specialist or call (608) 266-1926.
19. Wis. Stat. ch. 30 and 31.
20. Wis. Stats. § 30.12 - § 30.13, Wis. Adm. Code NR 326.

Guide to Community Planning in Wisconsin

21. Wis. Adm. Code NR 236.
22. Wis. Stat. § 31.14.
23. Wis. Stat. § 31.21.
24. Wis. Stat. § 31.253 creates an opportunity for a public informational hearing prior to the DNR authorizing dam abandonment.
25. Wis. Stat. § 31.385.
26. Wis. Stat. § 23.32(1).
27. Wis. Stat. § 23.32.
28. Clean Water Act § 404.
29. Clean Water Act, § 404(b)(1) guidelines.
30. Wis. Stats. § 23.32 and § 144.025 and Wis. Adm. Code NR 103.
31. **Nonpoint Source Control Plan for the East River Priority Watershed Project** (Wisconsin DNR, 1993).
32. **A Nonpoint Source Control Plan for the East and West Branches of the Milwaukee River Priority Watershed Project** (Wisconsin DNR, 1989).
33. Wis. Adm. Code NR 216.
34. Wis. Stat. § 59.974 and Wis. Stat. § 144.266.
35. Wis. Stats. § 61.354, § 62.234 and § 144.266.
36. Wis. Stats. ch. 33, subch. IV, § 33.21 - § 33.37.
37. Wis. Stats. § 144.253 and § 144.254 and Wis. Adm. Codes NR 190 and NR 191.
38. Wis. Stats. ch. 144, ch. 145, ch. 147, and ch. 162 and Wis. Adm. Codes NR 108, NR 110, and NR 113.
39. Wis. Stat. § 144.025 and Wis. Adm. Code NR 121.
40. Wis. Adm. Code NR 121.05(1)(g)2.
41. Wis. Adm. Code NR 121.05(1)(g)2.c.
42. For more information on Wisconsin's Source Water Assessment Program, readers can contact the Bureau of Drinking and Ground Water, Wisconsin DNR, P.O. Box 7921, Madison, WI 53707-7921.
43. Wis. Stat. § 147.015.
44. Wis. Stats. § 144.21, § 144.241, and § 144.2415.
45. Wis. Stats. § 60.70 - § 60.79.

Guide to Community Planning in Wisconsin

46. Wis. Stats. § 66.20 - § 66.26 and § 66.88 - § 66.918.
47. **Facts and Figures: U.S. Forests, 1995** (American Forest and Paper Association, 1995); **Wisconsin's State Forestry Program: Leadership in Caring for Land - Contributing to Quality Living** (Wisconsin DNR, 1989) [Pub. FR-061-89].
48. Wisconsin Department of Development, pers. comm. 1998.
49. Wis. Stats. chs. 70 and 77.
50. Wis. Adm. Code NR 46.
51. Wis. Stat. § 77.80.
52. Counties with county forest lands include Ashland, Barron, Bayfield, Burnett, Chippewa, Clark, Douglas, Eau Claire, Florence, Forest, Iron, Jackson, Juneau, Langlade, Lincoln, Marathon, Marinette, Monroe, Oconto, Oneida, Polk, Price, Rusk, Sawyer, Taylor, Vilas, Washburn and Wood.
53. Wis. Stat. § 28.11(5)(a).
54. For additional information on County Forest Master Plans, readers are referred to the individual county plans and the **Statewide Analysis of County Forest 10-Year Comprehensive Land Use Plan Approvals** prepared by the DNR to comply with Wis. Adm. Code NR 150.
55. Wis. Stat. § 29.175.
56. Wis. Stat. § 29.415 and Wis. Adm. Code NR 27.
57. 1995 Assembly Bill 585; Wis. Stat. § 29.415.
58. Wis. Stats. § 59.07(135)(a) and § 144.437(1).
59. Wis. Stats. ch. 144, subch. IV.
60. Wis. Stats. § 281.60.
61. Wis. Stat. § 292.65.
62. Wis. Stat. § 71.28.
63. Wis. Stat. § 66.462.
64. To obtain a copy of **The Financial Resource Guide for Redevelopment**, contact the DNR's Bureau of Remediation and Redevelopment, P.O.Box 7921, Madison, WI 53707-7921. (608) 266-1618.
65. Wis. Stat. § 292.15(2)(am).
66. Wis. Stat. § 292.13,
67. Wis. Stat. § 101.43 and Wis. Adm. Code COM 47.
68. Wis. Stat. ch. 295.

Guide to Community Planning in Wisconsin

69. Wis. Stats. § 293.01 - § 293.95, Wis. Adm. Codes NR 182 and NR 132.
70. Wis. Adm. Codes NR 140 and 182.
71. Wis. Adm. Code NR 132.
72. Wis. Stat. § 30.41.
73. Wis. Stats. § 30.40 - § 30.49.
74. Wis. Stat. § 30.27(2) and (3).
75. Wis. Stat. § 1.12.
76. Wis. Adm. Code NR 150.
77. See also Brian Ohm, "*Wisconsin's Environmental Decade, Inc. v. Wisconsin Department of Natural Resources: The Limited Role of Secondary Impacts in Threshold Determinations Under the Wisconsin Environmental Policy Act*," **Wisconsin Law Review**, vol. 1986, pp. 585-611.

Chapter 11

AGRICULTURE

Chapter 11

1. Farmland Preservation Planning

2. Other Issues

Land and Water Resource Management Plans

Agricultural Impact Statements

Drainage District Program

Local Regulation of Livestock Operations

Agricultural Shoreland Management

3. Resource Materials

4. Endnotes

Within a comprehensive community planning approach, agricultural preservation is often only one goal among many. When a county, town, city, or village chooses to develop a plan for preserving farmland, it must identify the farmland it wishes to preserve. One of the most sensitive parts of any planning or zoning program is determining how to designate individual parcels of land. Which land belongs in an agricultural district? Should it be limited to farmland located on highly productive soils? Should marginal cropland and pastureland be included?

In the past, agricultural preservation planning efforts sometimes assumed that mapping of preservation areas, i.e., "prime" lands, was the first step in the process. But realistically it is better seen as a concluding step in a process which seeks to examine the values of the community, to document and analyze the trends in farm use and productivity within the context of demand for other uses of land, and to engage residents in informed dialogue about the future vision of how

they want their community to be. Designating lands to be preserved is so intimately tied to an understanding of the future rates and density of development, the prospects for different types of agricultural products, and the clustering of compatible uses, that it is putting the cart before the horse to designate preservation areas first.

Community values are typically reflected in the policy goals of a plan. The purposes cited for agricultural preservation vary. Some state and local plans list the following goals: preservation of small family farms as a lifestyle choice, regional food security, scenic and amenity values, community separation and open space preservation, groundwater recharge, habitat preservation, flood mitigation, economic diversification and rural jobs, and cultural tradition. Food security has become increasingly important with growing awareness of the shrinking global farmland base, the growing demand for food from the world population, and the evidence of limits to yield increases.¹ Farm profitability is another frequently cited goal. It requires preservation of the farmland base, but is more dependent on factors outside the direct control of local government such as the price of milk and nonland production costs.

The issue of preservation of the farmland resource is also tied closely to urban and rural development patterns, nuisance complaints against farmers, premature idling of farmland, declining investment in farm areas in expectation of development, open space preservation, growing scale and concentration of farm operations, water quality and soil loss, and the quality and productivity of remaining farmland. The focus of

Guide to Community Planning in Wisconsin

agricultural planning processes may vary greatly depending on which of these issues are most central to a given community. Soils that are viewed as highly productive in one county might be classified as only moderately productive in another. A small farm considered marginal by the standards of a rich agricultural county might be a viable economic unit well worth preserving in the eyes of another county.

Likewise, community priorities may vary with available information. It is important, therefore, that people in the community understand growth trends, changes in farmland use, tenure and productivity, age of the farming population, and what can be reasonably expected in the future based on the best information available. The two processes of clarifying community values regarding land use priorities and documenting land use needs and trends should take place concurrently and respond closely to each other.

Local communities planning for agriculture in Wisconsin can receive guidance from several programs administered by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). These programs, which range from farmland preservation to soil and water conservation, are discussed in this chapter.

1. Farmland Preservation Planning

1.1 Background

The loss of good farmland to other uses has concerned people in Wisconsin for decades. People recognize that maintaining local farms and related agricultural businesses is important for the state's economy. Also, people have become more aware of the economic, environmental, and energy costs of scattered urban development. Farmers want to protect their operations from conflicts over farm noise, odor, fence maintenance, and trespass. Rising taxes, rising land values, and encroaching homes impede new farmers from

entering the profession, discourage farm investment, and encourage speculation.

In 1977, the legislature adopted the Farmland Preservation Act.² The Act sought to address the loss of good farmland by encouraging local agricultural preservation planning and implementation and by providing tax incentives to individual farmers who make a commitment under the program. The program consists of three components: land use planning, soil and water conservation, and tax relief.

1.1.1 Land Use Planning

Farmers may participate in the farmland preservation program if they live in counties with agricultural preservation plans and in town, cities, or villages with certified exclusive agricultural zoning ordinances districts. This program benefits citizens by encouraging local governments to plan for orderly development, to preserve land for farming and still provide space for new housing, parks, commerce, and industry.

In Wisconsin, every county except Milwaukee and Menominee has a plan to preserve land for agriculture. The plans allow local governments to set aside districts for agricultural use only-exclusive agricultural zoning districts. There are currently in place 189 exclusive agricultural zoning ordinances covering 428 local units of government.

1.1.2 Soil and Water Conservation

Landowners who participate in the program work with their county land conservation departments to develop conservation plans for their land. Following such plans prevents erosion, and helps prevent waterways from filling with silt and pollutants.

1.1.3 Tax Relief

Landowners who participate in the farmland preservation program are eligible to claim tax credits in return for keeping their land in agricultural use.³

In 1997, nearly 22,500 farm owners received farmland preservation tax credits totaling \$22.5 million. The average credit was about \$1,000 per claimant. The credits and payments

Guide to Community Planning in Wisconsin

offset about 29 percent of the total property taxes paid by farmers who claimed the credit.

1.2 Agricultural Preservation Planning

Agricultural preservation plans are a major component of the Farmland Preservation Act. The plans are designed to delineate areas which are to be preserved for agricultural use based on the best available information such as soil surveys, aerial photographs, on-site surveys, and other studies.

Agricultural preservation plans must be submitted to DATCP for certification by the state Land and Water Conservation Board. The standards for preparing and updating agricultural preservation plans are detailed in the statutes.⁴ The requirements are briefly summarized here. More specific information and questions of interpretation or application can be referred to staff at DATCP by calling (608) 224-4603.

1.2.1 Policy Statements

At a minimum, agricultural preservation plans must include policy statements related to agricultural land preservation, urban growth, the provision of public facilities and the protection of significant natural resource, open space, and scenic, historic or architectural areas.⁵

1.2.2 Maps

The farmland preservation plan must also include a series of maps, including a county map and one or more detailed maps for each town in the county. These maps must identify which agricultural areas are to be preserved, areas of special environmental significance, and if desired, agricultural-transition areas for future development. The maps must be at a scale of one inch equal to 2,000 feet or greater in detail.

Agricultural preservation areas must be in blocs of at least 100 contiguous acres. Agricultural preservation areas must be chosen on the basis of soil types, topography, agricultural productivity and trends, current and potential agricultural use, and other relevant factors identified in the plan. Agricultural preservation areas must be designated in every town or the plan

must explain why no areas are designated in a particular town.

Transition areas must be in blocs of at least 35 contiguous acres. If transition areas are identified, they should be of a size necessary to accommodate expected development over a period of at least 10 years. The plan must explain the basis upon which transition areas are chosen. If no transition areas are identified in a town, the plan must provide an explanation. The county must also provide a statement that affected municipalities were consulted in the designation of transition areas.⁶

The maps may include areas other than those designated as agricultural preservation areas or transition areas. Depending on the community, the maps must identify areas of nonagricultural use, including industrial, commercial, transportation, and residential uses. The maps must also identify areas of special environmental, natural resource, or open space significance.

Criteria for placing lands in an agricultural preservation area might include:

Lands that are the best agricultural lands of the area, lands that are fertile, flat, accessible, and of sufficient size and shape to be worked conveniently. [The best land that is most easily farmed should be preserved.]

Lands that are of sufficient contiguous area to sustain the farming economy and community. [Farmlands that are of sufficient size and surrounded by other farm land, relatively close to farming services such as large animal veterinarians, farm supply and machinery stores, and, importantly, farming neighbors with whom to exchange labor.]

Lands that are buffered by either distance or natural or man-made features (hills, interstate highways, etc.) that offer a distinct and effective buffer between agriculture and potential conflicting uses.

The unique natural, historical, and cultural features of an area should also be designated. Land that is steep, wooded, and has

Guide to Community Planning in Wisconsin

never been cultivated may not be in an agricultural area to be preserved, but that does not mean it should be developed. The land may be important for other reasons that become evident during the planning process.

1.2.3 Relationship To Other Plans

The main focus of the Farmland Preservation Act is on county agricultural preservation plans which are certified by the Land and Water Conservation Board. However, cities, villages, and towns are not precluded from preparing agricultural preservation plans. County agricultural preservation plans must include agricultural preservation plans adopted by towns, cities, and villages.⁷

The original farmland preservation plans were completed and certified by the Land and Water Conservation Board in the late 1970's or early 1980's. Some of those plans are being totally updated or amended in part. Most plan amendments currently being submitted to DATCP for certification by the Land and Water Conservation Board involve new towns being added to a basic county plan, or updating of county plans on a town-by-town basis. Plans prepared by towns, cities, or villages cannot be certified on their own. Amendments or updates of certified county plans of a town-wide or broader scope must be submitted to DATCP for review and certification.

Plans prepared by towns must be consistent with existing county plan goals and objectives, mapping criteria, policies, and information. No uncertified amendment to a certified plan is considered effective for tax credit purposes. New plan updates will be granted certification for 10-year periods.

The county agricultural preservation plan must be included as part of the county development plan, if there is one, and must be consistent with the other parts of that plan.⁸ The county's agricultural preservation plan must also be consistent with certain other plans that may be present in the county, including land use plans, transportation plans, area-wide water quality management plans, and regional plans adopted by

the county.

Since county development plans must incorporate the master plans of cities and villages, the agricultural preservation plan will reflect those plans. The agricultural preservation plan should also be consistent with other regional and municipal plans, such as area-wide water quality management plans and plans prepared as part of a cooperative boundary agreement.

The county agricultural preservation plan must certify that the plan is consistent with these other plans. If there are inconsistencies, the county agricultural preservation plan must describe the inconsistencies between it and the other plans, and must indicate how those inconsistencies will be addressed. The county agricultural preservation plan must describe specific strategies that the county will use to maintain consistency among the plans identified above. As other plans are amended, counties will also need to ensure consistency.

1.3 Data and Analysis

The county agricultural preservation plan must be based on relevant data and analysis set forth in the plan. The plan may incorporate relevant data and analysis from other sources, such as other plans. The data and analysis must include a current description and a future projection (a minimum 10-year projection) related to each of the following:

- Agricultural use and productivity;
- Natural resources and open space;
- Land uses in the county, including agricultural, residential, commercial, industrial, transportation, recreational, open space, and other uses. The plan must identify land use patterns and trends that may affect agricultural lands and open spaces;
- Population size, distribution, and trends. The plan must identify projected changes in population size or distribution that may affect agricultural lands and open spaces;
- Residential and housing development trends. The plan must identify development that may affect agricultural lands and open spaces, and

Guide to Community Planning in Wisconsin

must specify areas where development is expected to occur;

Urban growth and development. The plan must identify where urban growth is expected to affect agricultural lands and open space;

Demands on public facilities. The plan must analyze the relationship between public facilities, urban growth, and development, and identify critical public facility issues that may affect agricultural lands and open spaces;

The prevalence and distribution of septic systems and other private waste disposal systems in the county. The plan must identify areas where private waste disposal systems are currently prohibited or limited.

1.3.1 Agricultural Data Sources

Data for an agricultural preservation plan can be collected from a wide variety of sources. Many resources are available at the county and state level. For example, each county in Wisconsin has a soil survey compiled by the Soil Conservation Service, now called the Natural Resource Conservation Service (NRCS). Versions of this soil information are available on computerized geographic information systems in some Wisconsin counties. This means that soil and other maps that include attributes such as topography, drainage, wetlands, transportation, etc., can be produced relatively quickly and accurately.

The NRCS can render assistance in educating communities about its Land Evaluation-Site Analysis (LESA) system. The LESA system is one that allows weighing of a variety of land and site attributes to produce a quantitative score to apply to land. The scores that different parcels of land attain according to this system provide a means to compare different lands according to the priorities established during the planning process.

A large amount of data on farm operators is available from the Census of Agriculture carried out every five years. The following list is not exhaustive, but illustrates the scope of information they provide:

County-level data on the number and

percentage of farm operators living on-farm,

the distribution of operators by the number of days a year they work off-farm,

the length of time spent on the present farm; the amount of land rented versus owned,

the amount of cropland harvested by type of tenure,

the age, sex, and ownership type of farm operators. (Note that the Census definition of a farm includes all operations selling as little as \$1,000 of farm products per year. To focus more on commercial-scale farms, county-level data are available on: number and acreage of farms with sales of \$10,000 or more by commodity group:)

farm production expenses by major expense category and number of farms using each type of farm input, from which average expenses per farm can be derived,

net cash returns,

farm size distribution,

government payments,

value of land and buildings,

number of farms using various types of machinery and equipment,

number of milk cows and beef cows,

number of hogs, cattle, and calves sold,

frequency of farms of various herd sizes,

number of specialty farms of various types, and

number of acres harvested by crops.

Similar unpublished town-level data can be purchased from the Bureau of the Census. Such data are available at 5-year intervals from the Census of Agriculture at the county level. Specialized requests for this data will be available at the town level for 1992, 1997, and future censuses. Regional data on farm credit conditions, trends in commodity sales and land values, and average cash rents is available from the Federal Reserve Bank of Chicago.

Data on the number of acres, transactions, and value of farmland sold continuing in farm use and diverted to nonfarm uses are summarized each

Guide to Community Planning in Wisconsin

year at the county level by the Wisconsin Agricultural Statistics Service. (P.O. Box 8934, Madison, WI. 53708-8934; Phone: (608) 224-4848)).

Annual data on individual farmland sales at the municipal level is available at the Wisconsin Department of revenue via a microfiche database, and the Fielded Sales Database for sales of agricultural, forest, swamp, and waste land of over a certain size. These sales records also have data on:

- whether the land was improved,
- how much of the acreage sold was in Class I, Class II, Class III, pasture, forest, and swamp,
- whether the use is changing,
- the previous use and new use,
- whether the land was leased, if farmland,
- whether the land is owned by an individual, partnership, or corporation,
- value of each type of land per acre,
- value of any improvements, and
- quarter-quarter section location of the land sale.

The Wisconsin Agricultural Statistics Service (WASS) provides annual farm product data available for years in between agricultural censuses. These estimates are more reliable at the state level than at the county level, and are not available at all below the county level. County-level WASS data include:

- the amount of milk produced by grade,
- average milk production per cow,
- number of cattle and calves, and
- acreage and yield estimates for various commodities such as corn for grain, corn for silage, barley, oats, alfalfa hay, forage, winter wheat, soybeans, green peas, and snap beans.

Other farm surveys are also available. For example, WASS conducted a survey of farm

costs and rates of return in 1989-90 as part of a national survey. Such data is generally only reliable at the state level.

Survey-based estimates of average rental costs for farmland acreage were also collected until a few years ago for multi-county subregions of Wisconsin. These surveys involved samples too small to provide reliable estimates at the county or subcounty level. Although WASS discontinued surveys of rental rates a few years ago, the Federal Reserve Bank of Chicago periodically publishes data on farmland cash rental rates by state, though the bank does not endorse the data's accuracy (Federal Reserve Bank of Chicago).

University agricultural studies staff may be resources for unpublished primary survey data. Academic staff design and carry out independent studies of farm operator behavior, demographics, and farm characteristics. The Program on Agricultural Technology Studies at the University of Wisconsin-Madison (formerly called the Agricultural Technology and Family Farm Institute) offers publications that summarize state farm survey data collected and analyzed for topics such as:

- property tax burdens,
- manure and nutrient management practices,
- the entry-exit behavior of dairy farmers,
- attitudes on federal dairy policy,
- sustainable agriculture practices and expansion plans,
- a family farm survey encompassing data on demographics,
- household income and assets,
- off-farm work,
- health coverage, and
- reasons for farm exits.

Most of these surveys are state-wide in scope, but one study provides data on dairy farm entry and exit behavior by county for 1991-92, and offers a big geographic picture showing the frequency and distances of Wisconsin dairy farm

Guide to Community Planning in Wisconsin

relocations at one point in time.⁹ Local governments may benefit from existing studies which can provide context for better understanding their own local planning options.

Where possible, secondary data can be supplemented with primary data for the existing farms in the town using the knowledge of local people, surveys, and aerial photos. Many types of geographically specific parcel or field-level data can be collected through on-site and mail surveys. This information can be graphically depicted on mylar sheets over parcel base maps, or tabulated by quarter-quarter section. If a geographic information system with digitized parcel-level data is available, many types of attribute data can be entered and displayed for analysis.

Agricultural activities should be noted by type: cash grains, livestock, dairy, vegetable, fruit, sod, or idle. It should also note also contour farming and conservation practices. Possible conflicts with future residences involving sounds, odors, and low flying aircraft should be noted. Unique agricultural operations such as irrigated lands, orchards, sod farms, and so on should be specifically identified.

Most data comes in raw, descriptive format which requires further compilation or analysis to be useful for community planning. Compilation or description of the data will be of only limited usefulness. Even when data is available on a township level, it needs to be analyzed to make sense out of it for the purpose of local community planning.

1.4 Intergovernmental Coordination and Public Participation

A county must hold at least one public hearing before its agricultural preservation plan before is submitted to DATCP for review. Beyond this single meeting, counties must work hard to encourage public and local government participation in the development, adoption, and implementation of the county's agricultural preservation plan. The plan must describe procedures used to encourage this participation.

At least 60 days before the public hearing

date, the farmland preservation plan must be submitted for review and comment to all cities, villages, and towns within the county, all adjoining counties, and the regional planning commission to which the county belongs.¹⁰ A county must include a certified statement from the county clerk that the required notice was provided and copies of comments from the reviewing authorities when the plan is submitted to DATCP.

1.5 Plan Implementation

As with any planning process, implementation is a critical component. A county's agricultural preservation plan must describe specific county land use controls or other specific measures that are available to implement the plan. The plan may also include town and municipal policies. The measures described in the plan must be reasonably designed to implement the plan, must be administratively feasible, and must have a reasonable prospect of success.

The description must include the following measures as applicable:

- Proposals to adopt or amend an exclusive agricultural zoning ordinance;
- Strategies to encourage towns or municipalities to adopt or amend exclusive agricultural zoning ordinances;
- Strategies and programs that, by affecting the type, location, timing, use, capacity, or financing of public facilities, will affect future development and the preservation of agricultural lands. For example, the county may coordinate the agricultural preservation plan with the designation of sewer service areas in the area-wide water quality management plan;
- Applicable procedures and standards for regulating private waste disposal systems;
- Programs to enforce soil and water conservation plans, and to implement and enforce soil and water conservation standards in agricultural preservation areas and transition areas designated under the county's agricultural preservation plan;
- Procedures for ensuring that the county takes its agricultural preservation plan into consideration when approving special exceptions,

Guide to Community Planning in Wisconsin

conditional uses, and variances; rezoning land into or out of an agricultural preservation district; approving farmland preservation agreements or transition area agreements or approving releases from those agreements.

□ Other measures that the county will use to implement its plan, such as public facilities planning and budgets, development agreements, land acquisition programs, and coordination of county and municipal land use plans.

1.5.1 Exclusive Agricultural Zoning

Exclusive agricultural zoning is one tool used to implement the objectives of the agricultural preservation plan. Certified exclusive agricultural zoning ordinances are required for participation in the Farmland Preservation Program. Like the agricultural preservation plan, exclusive agricultural zoning ordinances must be submitted to DATCP for certification by the Land and Water Conservation Board.¹¹ The Farmland Preservation Act outlines a number of standards which need to be included in exclusive agricultural use ordinances.¹²

The Farmland Preservation Act mandates consistency between the exclusive agricultural zoning ordinance and the agricultural preservation plan.¹³ This legal requirement for consistency is generally not the case for other types of local plans prepared in Wisconsin. Exclusive agricultural use districts in a local zoning ordinance must be consistent with the agricultural preservation areas set out in the county agricultural preservation plan in order for that ordinance to qualify as an “exclusive agricultural zoning ordinance” for tax credit purposes.

Consistency in this context does not mean that the zoning ordinance map must be identical to the preservation plan map. It is expected that over time inconsistencies will develop as some land within transition areas becomes developed. Most currently certified agricultural preservation plans were adopted long ago and are in need of updating. When new zoning ordinances are submitted to DATCP for certification by the Land and Water Conservation Board, a considerable degree of inconsistency between the two maps often exists.

Once an exclusive agricultural zoning ordinance is certified by the Land and Water Conservation Board, the ordinance can be adopted by the local unit of government. For the most part, the ordinances can be adopted and administered in accordance with the general zoning provisions discussed in Chapter 6.¹⁴ In urban counties (those with a population density of 100 or more people per square mile), a county ordinance can become effective in all towns six months after adoption by the County Board unless a majority reject the ordinance. If a majority of the towns reject the ordinance within the six months, it will not become effective anywhere in the county.¹⁵

In rural counties (those with population densities of less than 100 persons per square mile) the procedures are the same as for general zoning. The county ordinance is effective in a town only when it is approved by the town board.

A county may also amend the text of an existing county ordinance to bring it into compliance with the Farmland Preservation Program. Text amendments may become effective in those towns which do not reject the ordinance, even though a majority of towns do reject it.¹⁶ In the case of amending the map of an existing county zoning ordinance to bring it into compliance with the Farmland Preservation Program, the procedures would follow those for general zoning.

Once an exclusive agricultural zoning ordinance is in place, rezoning of areas zoned for exclusive agricultural use is to be allowed only after certain findings are made based on the adequacy of public facilities to accommodate development, as well as on environmental considerations.¹⁷ Land rezoned is subject to a lien for the amount of tax credits paid on the land rezoned.¹⁸ DATCP must be notified of all rezonings.¹⁹

1.5.1.1 Use Consistent with Agricultural Use

One of the main standards for exclusive agricultural use ordinances is that uses permitted or allowed in an exclusive agricultural zoning district must be “consistent with agricultural use.”²⁰ For the zoning ordinance to be certified,

Guide to Community Planning in Wisconsin

language stating this must be included in the zoning ordinance. The Farmland Preservation Act defines “use consistent with agricultural use” to mean any activity that meets all of the following conditions:

- The activity will not convert land that has been devoted primarily to agricultural use;
- The activity will not limit the surrounding land’s potential for agricultural use.
- The activity will not conflict with agricultural operations on the land subject to a farmland preservation agreement;
- The activity will not conflict with agricultural operations on other properties.

This language can be used as a standard in locating conditional uses in exclusive agricultural zoning districts. For example, a frequent complaint at the town and county level with regard to the 35 acre minimum lot size requirement in an exclusive agricultural zoning district concerns the placement of houses that limit the continued use of that parcel for agriculture. Including language defining “use consistent with agricultural use” in the zoning ordinance allows more effective control of non-farm residence uses in an exclusive agricultural zoning district. Some ordinances place the language in the definition section of the zoning ordinance and use only the phrase “use consistent with agricultural use” in the conditional use section of the exclusive agricultural zoning district. Other zoning ordinances have the whole definition in the conditional use section of the exclusive agricultural district.

Using the statutory language as criteria in locating a conditional use should allow placement of that use in an area on the parcel so that it will not convert land to non-agricultural uses or limit the surrounding land or neighboring agricultural operations. A local ordinance can exceed the statutory standards or produce policy guidelines that further elaborate on the statutory language. Applications for conditional use permits that do not achieve the requirements of the ordinance can be denied.

1.6 Soil and Water Conservation

In order to be eligible for the farmland preservation credit, farming operations must be conducted in compliance with reasonable soil and water conservation standards established by the county land conservation committee.²¹ Those standards are applied in the development of conservation plans on each farm participating in the farmland preservation program.

The land conservation component of the farmland preservation program is important for the goals of farmland preservation and also for land and water conservation in the State of Wisconsin. Land conservation can also have benefits to the individual farmer. Evidence from several counties suggests that land conservation plans developed on lands owned by participants in the Farmland Preservation Program can substantially reduce soil erosion on these lands.

Data from Dane County show that the average soil erosion rate on cropland in 1985 was 10.5 tons per acre per year, while in 1997, it was 4.0 tons per acre per year. This progress in soil conservation can be attributed in part to Dane County’s Farmland Preservation Program participation rate, the highest in the state. Land conservation planning and reduced soil erosion can mean that fewer inputs (fertilizer, etc.) will be required on the land in years to come. The fertility of the land will be sustained in part because it is not washing away. This should save the farmer money. There are also regional benefits. Less chemical fertilizer and reduced sediment transportation over a broad area can help reduce non-point source pollution of both surface and ground waters.

The county land conservation committee must monitor compliance with the plans and standards and issue a notice of noncompliance if the landowner fails to comply. If this occurs, a landowner is not entitled to farmland preservation credits. If a county fails to monitor compliance, the county may be disqualified from receiving state soil and water resource management grants.

Guide to Community Planning in Wisconsin

2. Other Programs

2.1 Land and Water Resource Management Planning

In 1997, the state passed a new law enabling county land conservation committees and their staffs to expand their conservation activities from controlling soil erosion on cropland to addressing all land and water resource issues of concern in their county. The goals of this new program are to identify methods to conserve long-term soil productivity, protect the quality of related natural resources, enhance water quality, and focus on severe erosion problems. A new kind of plan, the county "land and water resource management plan," will help focus locally-led planning and priority setting on implementation activities. These plans will take the place of the former county soil erosion control plans.

The details of the program will take some time to develop. However, the Land and Water Conservation Board (LWCB) has developed guidelines for use by counties to develop land and water resource management plans. For information about the plans and possible funding for the plans, contact the county land conservation office.

2.2 Agricultural Impact Statements

DATCP is required to prepare an Agricultural Impact Statement when the acquisition of more than five acres from any farm operation is proposed and the potential for condemnation of farmland exists. DATCP has discretion as to whether to prepare an impact statement when less than five acres is proposed and in instances when a project is located within a city or village limits. Town roads are exempt from the impact statement requirement.²²

Agricultural impact statements assess the effects of public projects on farm operations, farmland, and rural communities. They can be used by local governments in the planning process. The purpose of the agricultural impact statement program is to inform affected farmland owners, the project initiators, and the public about

the potential impacts of the project on agriculture. The premise of the program is that wise public investments cannot be made unless all the costs and benefits associated with projects are considered. An agricultural impact statement considers the agricultural costs and benefits and recommends ways to minimize the costs.

Public projects affect both individual farmland owners and the farmland resources of an area. For example, a new highway can directly remove farmland from production and indirectly encourage urban sprawl by improving access to rural areas. Urban sprawl can lead to conflicts between relocated urbanites and farm operations, increase property taxes, and put further pressure on farmers to convert farmland to other uses.

Land use decisions are important to the agricultural impact statement program because they provide the setting and need for public projects. Public projects, in turn, can affect future land use decisions by encouraging behaviors that put additional pressure on rural resources.

2.3 Drainage Districts

The drainage district program oversees the systematic drainage of lands for agricultural practices.²³ Nearly one third of Wisconsin's 79,000 farms use drains to remove excess water from the land, primarily through small-scale drains. These drains are organized into drainage districts. Primary responsibility for planning for and administering drainage districts resides with the county drainage board. The board also resolves drainage disputes among landowners. Twenty-five counties have drainage boards thus far, with jurisdiction over about 160 drainage districts.

Drainage boards are responsible for planning to meet specific rule requirements established by DATCP. DATCP has established standards for the maintenance of district drains and facilities, procedures for assessments of land benefited by drainage, and procedures for investigating districts for compliance. DATCP also reviews and approves construction and restoration plans, provides on-site inspections, and performs other activities that will bring

Guide to Community Planning in Wisconsin

drainage districts into compliance.

Drainage districts are required to include a 20-foot corridor on each side of the ditch which is to be used as a maintenance corridor.²⁴ No row cropping is permitted and vegetation is required. This requirement can be coordinated with soil and water conservation plans required under the Farmland Preservation Program. In addition, the county drainage boards are authorized to assess a single landowner for the costs of correction when he or she is the source of adverse impacts on downstream water quality. Landowners must receive drainage board approval before taking any action which could potentially affect a drainage system.

2.4 Local Regulation of Livestock Operations

Large-scale livestock farming operations are increasingly becoming an issue for many communities in Wisconsin. Local governments are restricted in their ability to regulate livestock operations (feedlots, confinement areas, etc.).²⁵ Local governments may enact regulations that are

consistent with and do not exceed the standards developed by the DATCP and DNR. Local governments may exceed these standards only if the local government demonstrates to the satisfaction of DATCP or DNR that the regulations are necessary to achieve certain water quality standards developed by the DNR.

2.5 Agricultural Shoreland Management Ordinances

Counties, cities, villages, and towns may adopt agricultural shoreland management ordinances.²⁶ These ordinances are different from the shoreland zoning ordinances administered by the DNR. The ordinances are intended to maintain and improve surface water quality in the context of agricultural operations. The ordinances must be reviewed and approved by DATCP before they can be enacted by a local community. A county ordinance does not apply in towns which have enacted an ordinance.²⁷

Guide to Community Planning in Wisconsin

3. Resource Materials

Farmland Preservation Program Training Manual: Agricultural Preservation Plans and Exclusive Agricultural Zoning Ordinance
(DATCP, March 1996).

County Drainage Board Handbook
(DATCP, July 1997).

Agricultural Impact Statements
Publication #AR-0214 (DATCP, May 1995)

The above materials are available from:
Department of Agriculture, Trade and Consumer Protection
Bureau of Land and Water Resources
PO Box 8911
53708-8911
(608) 224-4634

Holding Our Ground: Protecting America's Farms and Farmland by Tom Daniels and Deborah Bowers (Island Press, 1997).

AgLetter, published monthly by the Federal Reserve Bank of Chicago, P.O. Box 834, Chicago, IL 60690-0834. (312) 322-5111.
Available on Internet at <http://www/frchl.org>.

Guide to Community Planning in Wisconsin

4. Endnotes

1. **The Last Harvest**, by Paul Raeburn (University of Nebraska Press, 1997).
2. Chapter 91 of the Wisconsin Statutes.
3. Owners of farmland in agricultural preservation areas may qualify for farmland preservation tax credits if their land is zoned for "exclusive agricultural use -- preservation" or covered by a farmland preservation agreement. A Farmland Preservation Agreement is an agreement or contract between an individual farmland owner and DATCP. Through the agreement, the owner and DATCP agree to hold jointly the right to develop the land except as otherwise stated in the agreement. The agreement runs for a specific term of years. In addition, under the agreement, farming operations must be conducted in compliance with reasonable soil and water conservation standards adopted by the county. Tax credits are available to the participating farmland owners at a rate of 80% of those are claim tax credits under exclusive agricultural zoning.
4. Wis. Stat. §§ 91.51 through 91.63.
5. Wis. Stat. § 91.55(1)(a).
6. Wis. Stat. §§ 91.55(1)(b) and 91.55(3).
7. Wis. Stat. § 91.59(1). To be incorporated into the county agricultural preserve plans, city, village, or town agricultural preservation plans must meet the plan content and implementation requirements of the Farmland Preservation Act.
8. Wis. Stat. § 91.51.
9. Cross, John. (1994) **Entry and Exit Behavior of Wisconsin Dairy Farmers**, Research Paper No.6., Agricultural Technology and Family Farm Institute, University of Wisconsin-Madison.
10. Wis. Stat. § 91.55(3).
11. Wis. Stat. § 91.78.
12. Wis. Stat. § 91.75.
13. Wis. Stat. § 91.73(2).
14. Wis. Stat. § 91.73(1).
15. Wis. Stat. § 91.73(3).
16. Wis. Stat. § 91.73(4).
17. Wis. Stat. § 91.77(1).
18. Wis. Stat. § 91.77(2).
19. Wis. Stat. § 91.77(3).
20. Wis. Stat. § 91.75.
21. Wis. Stat. § 91.80(2).
22. Wis. Stat. § 32.035.
23. The provisions for drainage districts are outlined in Chapter 88 of the Wisconsin Statutes.
24. Chapter ATCP 48, Wis. Admin. Code.
25. Wis. Stat. § 92.15.

Guide to Community Planning in Wisconsin

26. Wis. Stat. § 92.17.
27. Wis. Stat. § 92.17(2)(ag).

Chapter 12

HOUSING

Chapter 12

- 1. Housing Assessment**
- 2. Affordable Housing
Manufactured Housing**
- 3. Federal Fair Housing Act**
- 4. Resource Materials**
- 5. Endnotes**

Housing is an important part of community planning. Housing is not simply the product of construction or a commodity to be bought and sold on the market. The actual physical structure is only one element in a larger service system that includes essentials such as sewer and water facilities, transportation, access to shopping, employment, and schools. For this reason, it is connected to other planning issues.

Good housing can provide people a sense of security, a life enhancing environment. It can help to build a sense of place. Communities need to ensure that adequate housing is available within the community to meet the range of housing needs of people at various life-cycle stages--apartments for young people starting out in the working world, "starter homes" for first time home buyers, "move up" housing, and housing for people in the later stages of life.

Location and access are important. For example, people need housing and jobs, not one or the other. A community planning for industrial development needs to consider all of the implications of attracting a new manufacturing facility. One major consideration is housing, for

new employees that might move into the community. The community needs to ensure that there is housing available in the area that people can afford with the wages paid for the jobs. Conversely, affordable housing without jobs does little to improve the conditions of those who need work.

Cities, villages, towns, and counties may also operate a housing authority. Housing authorities are responsible for correcting unsafe dwelling conditions and addressing affordable housing needs.¹ If a community has a housing authority, it is important to include the housing authority in the planning process.

1. Housing Assessment

A local housing plan can provide a framework for local decision makers to guide residential development and redevelopment efforts in the community. A local plan for housing will include three basic parts. First is an assessment of the supply of housing in the community. Second is an assessment of the demand for housing. Third are the policies that will guide the community's decision making for residential development and redevelopment.

1.1 Housing Supply

Recent surveys, data from the U.S. Census, and other current reliable sources may be used to assess the current housing stock in the community. The Community needs to evaluate its total number of dwelling units by type of dwelling

Guide to Community Planning in Wisconsin

unit--number of single-family homes, townhouses, duplexes, apartments, condominiums, cooperatives, and mobile homes. The community should understand the percent of each housing type as it relates to the total number of dwelling units. These numbers need to include new houses being built.

A community also needs to assess the number and percent of owners and the value of owner-occupied units. Likewise, it needs to assess the number and percent of renters and the rent ranges of the rental dwelling units. This part of the assessment should also evaluate current housing vacancy rates for all types of dwelling units.

Finally, the community needs to assess the condition of the local housing stock. A reason for assessing housing condition is to evaluate the need for housing rehabilitation. Evaluating the age of the current housing stock will give some indication of housing conditions. It is also important to do a visual assessment of housing conditions. A visual assessment may require that someone drive or walk around every residential block in the community to assess the quality of existing homes.

Criteria for a Visual Assessment²

A. Neglected

1. Peeling, cracking paint
2. Rotting porches, concrete damage
3. Sagging steps or cracked boards
4. Cracked or broken windows
5. Cracked or rotten walls, if brick or masonry, worn bricks or cracked masonry
6. A few shingles missing from roof or other minor damage
7. For manufactured housing, if metal, look for rust spots.

B. Major Defects

1. Major damage to porch such as broken or missing railings or supports
2. Major damage to steps such as missing boards, large cracks, and holes that might trip people

3. Missing window panes, rotting or sagging window frames
4. Extensive cracks and rotten boards in exterior walls; if brick or masonry, missing bricks or stones, holes smaller than a foot (if larger house is dilapidated)
5. Many shingles missing from the roof, holes not larger than one half foot that do not extend into the surface
6. Any bricks missing from the chimney
7. For large apartment buildings, no fire escapes on the upper floors.
8. For manufactured housing same as above criteria; if metal, extensive rusting, separation around any joints or corners.

C. Dilapidated

1. Housing tilts
2. Foundation sags
3. Collapsed porch
4. Collapsed chimney
5. Fire damage.

Substandard housing generally can be rehabilitated. If, however, the house meets three or more criteria on the substandard major list, it likely should be listed as dilapidated, as rehabilitation efforts would be very expensive. Dilapidated housing should not be included in calculating the supply of housing.

1.2 Housing Demand

A community's housing needs can be determined by taking the current supply of housing in the community and relating it to projected changes in the community's population and other factors. Household and employment forecasts will provide a community with insights into population changes and the future age distribution of the population. Based on general home buying characteristics, people ranging in age from 20-24 are generally renters. People aged 25-34 generally fall within the first-time home buyer group. People aged 35-49 are often in the move-up buyers market. As people age beyond 50,

Guide to Community Planning in Wisconsin

many move into a variety of different housing options.

Housing needs must be linked to a community's economic development plans. For example, what type of industry is a community seeking to attract? Is the community's housing stock affordable for the wages that people will receive working there? Where will new businesses locate? How does that location relate to the availability of housing?

Housing needs will be impacted by other community plans and policies. For example, how much land is available in the community for new residential development. What are the current densities for residential development. How do local regulations impact the cost and type of housing in the community. The community needs to ensure that its regulations do not unduly restrict a full range of housing choices to meet the needs

of the area.

1.3 Housing Policies for Future Life cycle Needs

Based on the assessment of current housing supply and anticipated housing demands, a community needs to develop policies for addressing future housing needs. The policies should address such issues as the need for affordable housing; the mix of housing types to meet the life cycle needs of residents; regional housing issues and needs; the need to link jobs and housing; and how local land use regulations can be used to help achieve housing needs.

Guide to Community Planning in Wisconsin

2. Affordable Housing

There is a lack of affordable housing in many places in Wisconsin. Affordable housing is defined in a number of ways. Usually it is defined as being housing that costs no more than 30 percent of a family's income per month. Communities benefit from having affordable housing. People living in low cost housing work at local retail businesses and manufacturing companies. The work they do makes it possible for those establishments to function in the community. If the establishments lack employees, they will go someplace else or choose not to locate in the community in the first place. Without employees, business, the prime generator of property taxes, cannot exist. Many communities therefore need to develop policies for ensuring the availability of affordable housing.

To aid in the implementation of affordable housing policies, the State of Wisconsin provides various affordable housing programs. The Wisconsin Housing and Economic Development Authority (WHEDA), a quasi-public entity, offers several programs to encourage the construction and maintenance of multifamily housing in the state. Following is a synopsis of two of the programs.

WHEDA Programs Encouraging Multifamily Housing³

Affordable Housing Tax Credits

Affordable Housing Tax Credits encourage the creation of affordable rental housing by offering a tax incentive to private sector investors. WHEDA allocates the credit and monitors the developments for compliance.

Affordable Housing Tax Credits Can Be Used For...

- New construction of residential rental units;
- Acquisition of existing residential rental developments;
- Rehabilitation of existing residential rental

developments.

Benefits To The Community...

- Creates quality housing with rents affordable to working families;
- Available, reasonably priced housing makes the community more attractive to employers considering relocation;
- Developments for elderly and special-needs individuals allow seniors to age in place and stay active in the community;
- Tenants who pay affordable rents have more discretionary income to spend in the local economy

Tax-Exempt and Taxable Bond Loans

Tax-Exempt and Taxable Bond Loans provide long-term, fixed-rate financing for the development of multifamily rental housing. Tax-exempt bond loans offer developers below-market interest rates on 30-year mortgages. Taxable bond loans are valuable to developers of Affordable Housing Tax Credit projects because of their 30-year fixed market rates.

Tax-Exempt and Taxable Bond Loans can be used for new construction, acquisition and rehabilitation, or rehabilitation of residential rental units. Eligible projects include one to three-story apartments, high-rise apartments, townhouses, retirement centers, CBRFs, and other housing types permitted by law.

For more information, see the WHEDA contact number in Appendix 1.

The state agency charged with expanding affordable housing options is the Division of Housing (DOH) located in the Department of Administration.⁴ The DOH provides housing assistance to benefit low- and moderate-income households. It offers state-funded housing grants or loans to local organizations, coordinates its housing programs with those of other state and local housing agencies, helps develop state

Guide to Community Planning in Wisconsin

housing plans and policies, and provides training and technical assistance. The division channels federal housing funds to local authorities and organizations, and administers federal funds for the homeless. It also administers the federally funded low-income weatherization program, which provides energy conservation services to low-income households. In addition, the division regulates manufactured home dealers and parks.

The following is a list of DOH programs that might be of interest to communities:⁵

Community Development Block Grant-Small Cities Housing (CDBG)

CDBG funds may be used for various housing revitalization efforts. Any Wisconsin city, village, or town with a population of less than 50,000 and not eligible for a direct federal CDBG grant, or any county not defined as "urban" by the U.S. Department of Housing and Urban Development (HUD), may apply.

Home Investment Partnerships Program (HOME)

A variety of affordable housing activities may be supported by federal HOME awards, including down payment assistance for home buyers, rental rehabilitation, weatherization related repairs, accessibility improvements, and rental housing development.

Housing Cost Reduction Initiative (HCRI)

Local sponsors annually compete for \$2.6 million in state grants to reduce the housing costs of low-income renters or home buyers. Eligible applicants include local units of government, American Indian tribes or bands in Wisconsin, housing authorities, and nonprofit housing organizations. Eligible activities are emergency rental aid, home buying down payment assistance, homeless prevention efforts, and related housing initiatives.

Local Housing Organization Grant (LHOG)

State grants are available to enable community-based organizations, tribes, and housing authorities to increase their capacity to

provide affordable housing opportunities and services.

For more information call: Division of Housing at (608) 266-0288.

At the federal level, the Department of Housing and Urban Development (HUD) is the primary agency responsible for encouraging the development and maintenance of affordable housing. The Section 8 program is best known of the HUD's initiatives. If communities have questions concerning Section 8 renewals or amendments, they should contact HUD at the local office listed below.

HUD runs a variety of other programs, as well, most of which can be accessed through the state or local government. However, communities may wish to compete for specific HUD grants. For more information on the competitive grant options, access HUD's national homepage (<http://www.hud.gov/>) or contact HUD's local office in Milwaukee. To contact that office use either this address and phone information:

U.S. Department of Housing and Urban Development
310 W. Wisconsin Avenue - Suite 1380,
Milwaukee, WI 53203-2289
Telephone: (414) 297-3214
Fax: (414)297-3947

Or website at:

<http://www.hud.gov/local/mil/wis.html>

The other organization at the federal level that provides resources for affordable housing is USDA. The USDA Rural Housing Service has various programs available to aid in the development of rural America. Rural Housing programs are divided into three categories: Community Facilities (CF), Single Family Housing (SFH), and Multi-Family Housing (MFH). These programs were formerly operated by the Rural Development Administration and the Farmers Home Administration.

For information on the USDA programs write or telephone using the following:

Guide to Community Planning in Wisconsin

Secretary of Agriculture
U.S. Department of Agriculture
Washington, D.C. 20250
(202) 720-7327

Or see the Rural Housing Service homepage at:
<http://www.rurdev.usda.gov/agency/rhs/rhs.html>

2.1 Manufactured Housing

Manufactured housing is becoming an integral part of the U.S. housing market. It is often an important source of affordable housing. The average cost of a brand new manufactured home is less than one third that of a new site-built (traditional) home. In 1997, nearly a quarter of new homes produced in the United States were manufactured, nearly a third of all homes sold were manufactured. In Wisconsin, over 125,000 households now live in manufactured housing.

Manufactured housing often suffers because of perceptions based on the old “mobile home.” However, since 1976, the federal government has demanded that manufactured housing be built to a set of quality standards. In Wisconsin, those standards are enforced by the Department of Commerce.⁶ Many manufactured homes are now designed to be compatible with many single family neighborhoods. The quality of the new version cannot be judged by its forerunner.

Manufactured housing can be placed on three different types of sites. The best known site is the “park” or land-lease community, typically used for what people commonly refer to as mobile homes. In this set-up, the household purchases the home but leases the land from the community owner. This option is often the most affordable. It allows owners to purchase housing without having to pay for the land.

The second is in a subdivision. The developer sells the lot to the owner who then has a choice of the design and landscaping of the home and lot. These subdivisions tend to look very much like traditional housing subdivisions in layout and variety of housing design.

Finally, manufactured housing can be placed on lots in traditional housing neighborhoods. In some cases, communities have

zoning ordinances that prevent the placement of manufactured houses in such districts. In others, new ordinances recognize the evolution of manufactured housing and the value of encouraging this form of affordable housing to the community.

Local land use regulations can regulate the location of manufactured housing. For a model zoning ordinance integrating manufactured housing into single-family neighborhoods, contact the Wisconsin Manufactured Housing Association at 1-(800) 236-4663. Cities, villages, and towns are authorized to license mobile home parks and collect fees in lieu of property taxes.⁷ The Department of Agriculture, Trade and Consumer Protection also regulates mobile home parks.⁸

Manufactured homes allow people who are priced out of the traditional housing market to purchase and own their own homes. Manufactured homes appreciate in value (a recent study showed appreciation rates of between 4 and 7 percent on the average) and they allow owners to build equity. They also provide occupants with a sense of privacy that multifamily housing cannot offer. Encouraging manufactured housing is one strategy for communities to use to meet affordable housing needs.

Guide to Community Planning in Wisconsin

3. Federal Fair Housing Act Amendments

Congress passed the Fair Housing Act as part of the Civil Rights Act of 1968.⁹ Initially, the act prohibited housing discrimination on the basis of “race, color, religion, or national origin.” In 1988, Congress extended the Act to prohibit housing discrimination on the basis of handicap or familial status (families with children). The 1988 law is known as the Fair Housing Amendments Act of 1988 (FHAA). Local zoning ordinances are subject to these provisions.¹⁰

Under the FHAA, “handicapped” is broadly defined to include persons with physical or mental disabilities, recovering alcoholics and drug addicts, many elderly persons, and persons infected with the Human Immunodeficiency Virus (HIV). The FHAA prohibits discrimination which means the “refusal to make reasonable accommodations in rules policies, practices, or services, when such accommodations are necessary to afford [handicapped persons an] equal opportunity to use and enjoy a dwelling.”

An area of conflict for some local communities in Wisconsin, as well as local communities nationally, is the siting of group homes for the disabled. The FHAA requires that local communities make “reasonable accommodations” for such homes. Understanding what is meant by “reasonable accommodation” is a source of conflict. While the FHAA does not define what is meant by “reasonable accommodation,” several courts have said that it “does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve.” Numerous legal challenges have been brought against local efforts to prohibit the location of group homes.

In 1995 the U.S. Supreme Court ruled that the FHAA prevents communities from excluding group homes for the handicapped from single-family residential zones.¹¹ The ruling involved a nonprofit organization that established a group home for 10 to 12 recovering alcoholics and drug addicts in a neighborhood zoned for single-family residential. The city’s zoning ordinance defined a “family” as “an individual or two or more persons

related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption or marriage.” Since the group home had more than five unrelated adults, it did not conform to this definition.

The issue before the U.S. Supreme Court was whether the city’s zoning definition of family fell within a provision of the FHAA which exempts reasonable restrictions “regarding the maximum number of occupants permitted to occupy a dwelling.” The Court found that the city’s definition was not a maximum occupancy requirement because it allowed an unlimited number of family members to live together. The Court therefore concluded that the city’s ordinance was not exempted from the reasonable accommodation requirements of the FHAA.

The Supreme Court did not answer the question: “What number of unrelated persons living together would not be discriminatory under the FHAA?” The nonprofit organization running the group home that was the subject of the case indicated that at least six residents are necessary in order for the home to be financially self-sufficient, provide a supportive atmosphere for recovery, and meet certain federal requirements. While the Court hinted that six may be a reasonable number, determinations of what is reasonable will need to be made on a case-by-case basis. (Communities can still enforce maximum occupancy restrictions to prevent overcrowding of a residence.)

Another area of contention under the FHAA involves separation requirements on the location of group homes. These requirements usually try to insure that group homes are located throughout a community rather than clustered in one section of the community. Often the group homes are required to be a certain distance apart. Under the Wisconsin Statutes, group homes are required to be at least 2,500 feet apart **unless** a local community, at its discretion, grants an exception.¹² On a number of occasions, courts in Wisconsin have found the refusal of a local community to grant an exception to this spacing requirement to be a violation of the reasonable

Guide to Community Planning in Wisconsin

accommodation requirements of the FHAA.¹³

Nationally, there is little uniformity on the spacing issue. For example, in a Minnesota case, the Court upheld laws requiring that new group homes be located at least a quarter mile apart.¹⁴ While the Court acknowledged that the spacing requirements on their face limit housing choices for the handicapped, it concluded the government's interest in dispersing group homes so they are part of the community and not clustered together offset the discriminatory effect of the laws. Application of the spacing requirements for group homes therefore needs to be examined on a case by case basis.

In closing, it is important to note that zoning ordinances still can be applied to group homes in an effort to achieve legitimate planning objectives. However, communities need to be cautious that they do not adopt zoning ordinances that discriminate against the handicapped. In addition, they need to insure that while a zoning

ordinance may appear neutral it is not applied in a discriminatory manner. As stated by one court:

*"There are few among us who do not have a friend or relative who has suffered the ravages of drugs or alcohol. They are persons who need our compassion and require our support . . . what this matter truly needs is not judicial action, whether it be state or federal, but for the parties to search their consciences, recognize the needs and hopes of the plaintiffs and the concerns and fears of the neighbors, and arrive at an accommodation which serves and enriches all who are involved in and affected by it."*¹⁵

Guide to Community Planning in Wisconsin

4. Resource Materials

Affordable Housing: Proactive and Reactive Planning Strategies, by S. Mark White (American Planning Association Planning Advisory Service Report Number 441, 1992).

Sheltered Housing for Older People: Getting Started, by John Merrill. (UWEX, publication no. B3437, 1988).

Guide to Community Planning in Wisconsin

5. Endnotes

1. Wis. Stat. §§ 66.40 - 66.404.
2. Taken from the **Small Town Planning Handbook**, by Thomas Daniels, John Keller and Mark Lapping (American Planning Association Planners Press 1995).
3. Taken from the WHEDA Homepage. See <http://www.state.wi.us/agencies/wheda/multifam.htm>
4. Wis. Stat. § 15.103(2).
5. Taken from the DOH homepage. See <http://www.doa.state.wi.us/doh/doh.htm>
6. Wis. Admin. Code § COM 27.
7. Wis. Stat. § 66.058.
8. Wis. Admin. Code § ATCP 125.
9. 42 U.S.C. § 3601, et. seq.
10. Wisconsin also has a state fair housing law with similar requirements to those of the federal law. See, Wis. Stat. § 106.04.
11. *City of Edmonds v. Oxford House, Inc.*, 115 S.Ct. 1776 (1995).
12. Wis. Stat. § 62.23(7)(i).
13. See *U.S. v. Village of Marshall*, 787 F.Supp. 872 (W.D. Wis.1991) and *"K" Care, Inc. v. Town of Lac du Flambeau*, 181 Wis.2d 59, 510 N.W.2d 697 (Ct. App. 1993).
14. *Familystyle of St. Paul, Inc. v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991).
15. *Oxford House-Evergreen v. City of Plainfield*, 769 F.Supp. 1329 (D.N.J. 1991).

Chapter 13

ECONOMIC DEVELOPMENT

Chapter 13

1. Framework for Economic Development Planning

2. Organizing for Economic Development

3. Endnotes

Many communities in Wisconsin currently face an important tradeoff. Rapid growth in urban and high amenity rural areas has created development pressure leading to the need to manage growth. At the same time, other communities seek to expand their economic opportunities. There is a perceived tension between managing growth, on one hand, and economic development on the other. A comprehensive approach to these issues dictates a balance. Implicit to managing growth is the focusing and channeling of economic development initiatives.

In this context, the problems of planning for economic development in smaller communities include the tradeoff between economic opportunities for local people and protection of the community's cultural, environmental, and social heritage. The planning initiative should be multi-faceted, addressing several issues simultaneously in order to strike a balance. The future of communities depends on the existing resource base, political structure in which decisions are made, and innovativeness of local residents. This, in essence, is the planning challenge. Local residents, resources, the business community, and public decision-makers need to guide the course of change for smaller

communities.

A community is defined by place, and the residents within that place often hold different opinions about the community and its future. They range from the "all growth is good" viewpoint to strong anti-growth sentiments, or the perspective that "no change" is preferable. The needs of people living in communities also vary widely. Planning for development needs to balance and address the needs that exist locally. For example, low-income residents require opportunities that match their skills and available resources to generate household income. At the same time, the opportunities being created may, in fact, impinge on some other aspect of the community deemed beneficial. Planning attempts to balance these values and the choices made in advance of change.

Wealth generation provides a defining characteristic of community economic development. Wealth encompasses all things that individuals and communities value. This often includes jobs and income creation, conservation of natural resources, and maintenance of a community's cultural heritage. Often times, wealth generation is associated with economic growth. Growth, in and of itself, is typically viewed as "more of the same" (e.g. more residential development, more industrial growth, more resource use). Wealth generation, in the broadest context, is far more focused on development. Development begins with strategies that address needs of local residents and attempt to deal with change in a different fashion.

In the broadest context, community economic development planning is a process of

Guide to Community Planning in Wisconsin

helping communities analyze their problems while exercising as large a measure of autonomy as is possible and feasible. Furthermore, successful development planning promotes identification of the individual citizen and involved organizations within the community as a whole.¹ Within the larger planning process, there exists the potential for conflict between alternative goals identified within the community. Simply put, the commonly advanced goal of economic growth is often in conflict with conservation of local resources, culture, and heritage. The success of the community hinges on its ability to bring together diverse interests in resource use and identify common ground for sustainable economic development.

One common means of thinking about economic development centers innovative methods that use community resources. These resources can be thought of as supporting, or promoting, two unique parts of the community economy. One part emphasizes the generation of new dollars within the community. These new dollars can be generated through sales of locally produced goods and services to nonresidents. Historically, these latter markets have focused on the sale of manufactured goods and/or agricultural commodities. Today, the “export-base” of a community also includes local purchases of goods and services by tourists, visitors, and retirees. Generally we consider economic activities that bring injections of money into the community as the “export-base.”

The second part of the community’s economy emphasizes activities that serve the needs of local residents and businesses. For example, sales made by the local grocery and hardware stores to local residents are considered an integral part of the community’s economy. By maintaining the circulation of dollars within the community, leakages are minimized and economic opportunities are effectively captured. The art of community economic development planning is the construction and implementation of innovative strategies that promote the injection of money to and retention of money within communities. This is done in the context of meeting economic needs of local residents while maintaining the social, cultural, historical, and environmental attributes

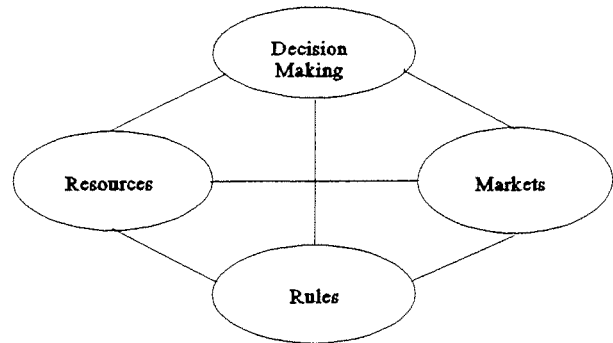
valued by the community.

This chapter outlines the specific strategies that fit into a larger comprehensive planning effort for Wisconsin communities. The discussion is organized around three additional areas. First, there is a discussion of a framework for thinking about economic development planning. The second section discusses how communities organize for economic development. The final section is a discussion of the policy development context for economic development.

1. Framework for Economic Development Planning

Community economic development is about changing perceptions and choices regarding community resources, markets, rules, and decision making capacity. The essence of how community economic development occurs is outlined in Figure 1. Community economic development is best achieved when the community uses accumulated

Figure 1



knowledge (both academic and experiential), to re-frame questions that change the set of perceived options available. Within the larger planning process, perceived conflicts (for example, between development and environmental protection) can be simultaneously pursued. Given appropriately framed questions, conflicts can be ameliorated. The choices a community makes regarding the four nodes of Figure 1 and their definition go a long way in making community economic

Guide to Community Planning in Wisconsin

development planning attainable.

The model implied in Figure 1 requires some specific definitions of the four nodes.² *Rules of the economic game* include such realities as tax laws, eligibility rules for programs, environmental regulations, zoning, union contracts, and cultural norms. Policy suggestions appear straightforward--recognizing the effect of rules and, via the political process, changing those rules that have been found to confuse, hinder, or conflict with societal desires.

Decision making capacity is the ability to distinguish among problems, symptoms, and inventiveness of the response. Planning questions include framing issues in a fashion that enables possible solutions to appear³. It definitely includes getting to the problem rather than dealing with symptoms and history. Policy suggestions include education and communications about problems and options. It also includes creating a collaborative learning environment that promotes exploration of alternative solutions.

Markets generally refer to the two unique parts of the community's economy: external (export) and internal (nonexport). This node essentially contends that the community can produce competitively. It just needs to determine what to produce, how markets are changing, and where these markets are located. The planning questions include knowing what markets exist for community output (industrial, retail, service); location of markets; who is the competition; and how the market changes. The policy suggestions include increasing injections of new dollars and/or maintaining the circulation of local income.

Resources generally refer to concerns with amount of, access to, protection of, and mobility of community assets. This perspective essentially contends that we know what markets are and how to satisfy them. The planning questions are concerned with identifying local resources that include land, labor, capital, and technology and whether they are available for alternative uses (mobility) or in sufficient amounts to increase community economic wealth. Policy suggestions include increasing the amount and mobility/access of capital, labor, and technology; and shifting resources to more valued uses.

The vertical axis of Figure 1 could be

thought of as including two elements of a strategy or policy. Strategy refers to the pattern of purposes, programs, actions, decisions, or resource allocations that define what an organization is, what it does, and why it does it.⁴ Historically, economic development strategies have focused on expanding the export base of the community. This traditionally entailed smokestack chasing, the promotion of agricultural commodities, and old fashioned notions of economic growth. In the context of contemporary community economic development planning, the scope of strategies are broader and reflect the multi-dimensional goals of the community.

Strategies for community economic development have been widely discussed and documented. Prior to generating a set of strategic resources specific to Wisconsin, it is often helpful to review a comprehensive set of broad-based community economic development strategies.⁵ Within the framework identified above, these strategies aim at enhancing the injection and circulation of new dollars in the community. The five sources of change upon which these general strategies are based include: 1) migration of firms; 2) changes in size of existing firms; 3) births/deaths of firms; 4) location of private expenditures; and 5) location of public expenditures.

1.1 Migration of Firms

The addition of new export-oriented businesses to a community will add new employment and income directly. Export-oriented businesses include manufacturing, agriculture, and non-manufacturing (such as tourist attractions, insurance headquarters, computer services, and wholesale warehouses). In a planning context, the relevant questions that need to be addressed take the form of setting aside land for industrial development, insuring that public infrastructure services are in place, and seems to it that the nature of the targeted businesses are complementary to the broader goals of the community.

Other questions that need to be raised include addressing issues of agricultural value added (linked businesses that support agricultural

Guide to Community Planning in Wisconsin

commodity production) and tourism services/infrastructure. Within the broader community development context, many tourism components also enhance the quality of life for local residents. For example, restaurants, museums, and cultural events that cater primarily to tourists also attract and benefit local residents.

Examples of specific activities that local communities can pursue to attract new businesses include:

1. Development of local industrial sites and public services, and dissemination of labor information to potential employers;
2. Development of community and regional facilities necessary to attract new employers:
 - a. Transportation (e.g., airports, railways, highways)
 - b. Recreational facilities (e.g., parks, hunting grounds, restaurants, hotels, convention centers)
 - c. Communications (e.g., newspaper, telephone)
 - d. Services (e.g., banking, computers, legal assistance, accounting);
3. Encouragement of collective action through formation of organizations such as industrial development corporations;
4. Identification and organization of community capital resources to assist in attracting new business (e.g., industrial revenue bonding, bank loans);
5. Identification through research of basic employer(s) with greatest potential; and
6. Identification of specific public programs, projects, offices, and or services that could be located in the community and taking political action to secure them.

Organizations in Wisconsin that help communities attract new firms include Forward Wisconsin and the Department of Commerce. See Appendix 1 for information on how to contact these organizations.

1.2 Changes in Size of Existing Firms

Recent research suggests that a significant proportion of job and income opportunities originates within existing local firms. The more efficient existing firms are, the more competitive they can be in regional, state, national, and increasingly, international markets in the long run. By expanding efficiently, firms can return more economic wealth to the community. The planning questions involve such things as financing for expansion, labor markets, educational opportunities for management and labor, and space available for expansion. The Planning process hinges on the active participation of the local business community. The collection of increasingly popular business retention and expansion programs are examples of strategies that attempt to improve the efficiency of local businesses.

Examples of specific community-based initiatives to help existing businesses remain competitive include:

1. Strengthening management capacities of existing firms through educational programs (e.g., personnel, finance, organization);
2. Encouraging of business growth through identification of equity and loan capital sources;
3. Increasing knowledge of new technology through educational programs in science and engineering;
4. Aiding employers in improving work force quality through educational programs, employment counseling, and social services (e.g., day care, health services); and
5. Developing of community and regional facilities that improve local business efficiency and access to nonlocal markets (e.g., transportation, services, communications).

Agencies in Wisconsin that help local businesses remain competitive include WHEDA, UW-Extension and the Department of Commerce. See Appendix 1 for information on how to contact these agencies.

Guide to Community Planning in Wisconsin

1.3 Births/Deaths of Firms

There is a continuing need for new businesses to meet changing community needs (e.g., from growth and/or alternative sources of demand). A new business can meet these needs and bring new income and employment opportunities. These new businesses can come from firms relocating into the community or from local entrepreneurial activity. In Wisconsin, a significant source of new business development comes from entrepreneurial activity. Firms that are "home-grown" also tend to have a greater sense of community commitment. The planning questions include whether or not as much time is spent promoting local entrepreneurs as attracting new businesses from elsewhere. The inclusion of more local entrepreneurs in the discussion often leads to more locally appropriate development.

Examples of methods to encourage entrepreneurial activity include:

1. Organization of community capital resources to assist new business formation:
 - a. encouragement of investment of private funds locally through formation of capital groups;
 - b. encouragement of the use of secondary capital markets and public financing programs;
2. Identification of market potential for new retail, wholesale, and input-providing business;
3. Provision of individual counsel and intensive education for those interested in forming a new business; and
4. Provision of the same services to start-up businesses as is provided to businesses sought from outside the community.

1.4 Location of Public Expenditures

A community may strive to reacquire funds taxed away by broader governmental units and, if possible, acquire tax dollars from wealthier communities. For many community investments,

there are a number of public programs that help bring tax dollars back to the local community. These can take the form of both infrastructure developments and operating expenses. For example, these could include the expansion of sewer and water facilities that are supported by the Wisconsin Department of Natural Resources or the Federal Environmental Protection Agency funding through the Safe Water Drinking Act. Other examples include the investment made by State or Federal agencies in local housing developments that provide economic opportunities for local contractors. The return of social security dollars to local residents provides an example of ongoing expenditures made by non-local units of government. The planning questions include developing methods for monitoring state and federal programs, support of political activities to insure fair treatment of community concerns by broader governmental units, and working with local residents to insure that they take full advantage of existing public programs.

Examples of locally-based initiatives that have been applied to reacquire public funds include:

1. Ensuring correct use of public assistance programs for the elderly, handicapped, and others who cannot work;
2. Using aids from broader governmental units whenever possible (e.g., for streets, parks, lake improvements, emergency employment) through active monitoring and support of activities of local officials;
3. Supporting political activities to ensure fair treatment of community concerns by broader governmental units; and
4. Recognizing of the important role of flow-of-funds transfers into the community (e.g., retirement benefits, unemployment compensation).

Guide to Community Planning in Wisconsin

2. Organizing for Economic Development

A common misperception is that economic development is someone else's problem or that it occurs naturally. Communities that are successful in economic development, however, have invariably organized themselves and their resources to address the concerns of economic development and community change. In this section, we will review alternative processes that successful communities pursue in organizing for economic development. This includes 1) individual organizations that assume responsibility for economic development and 2) strategies for these organizations to do work jointly to pursue their common economic aspirations.

Before organizational aspects of community groups are addressed, a discussion of the contextual aspects of economic development is needed.

First, communities are decision-making and implementing units. This means that the end result of any action will lead to some type of change.

Second, communities have multiple interests and objectives that are often perceived to be in conflict. Through the larger planning process, the active engagement of interested parties (institutions, stakeholder groups) oftentimes reduces perceived conflict between competing community goals. These interested parties are often organized according to single-dimensional issues. For example, chambers of commerce are interested in enhancing the profitability of local businesses while the local hunting and fishing club may be more interested in conserving natural resources and managing wildlife habitats. In many smaller communities, membership between the two groups may overlap. Yet, the two separate institutions seldom work together formally.

Third, the larger planning process needs to be inclusive of alternative perspectives and seek to involve the wide range of socioeconomic groups present in a community. The reason for this is the simple fact that at the plan implementation stage, excluded groups can often derail the action called

for in the plan.

Successful development planning requires a holistic approach to issues identification and problem solving. The problem with single-dimensional institutions and their sole approach to the development process is their failure to examine all aspects of the community. This means that, for example, the chamber, the industrial development group, the fishing and hunting groups, and environmental groups need to appreciate multiple perspectives on community issues.

While creating jobs and income are often the driving forces behind economic development initiatives, the implications of the development process are broader and more far-reaching. For example, successful expansion of existing businesses often creates increased demands for housing that alters the land use patterns in the community. Agricultural land on the outskirts of communities can be diverted into residential uses as land within communities becomes scarce and the need for housing increases. This creates questions about the expansion of community services such as sewer, water, and schools. For this reason, it's important to have a broad, diverse group of organizations involved in the planning process.

This also places a priority on more objective assessments of development impacts that extend beyond simply jobs and income. There is a need to evaluate the full impacts of any type of development event. Public education/research agencies, such as the University of Wisconsin-Extension, and other institutions within the University of Wisconsin system can assist with assessment projects that objectively assess a comprehensive array of development impacts. Also, consultants and private research firms can provide assessment and planning services to local communities.⁶

Guide to Community Planning in Wisconsin

3. Endnotes

1. Additional discussion of how community economic development planning is defined can be found in **The Community in America** (Third Edition) by Roland Warren (Rand McNally Publishing, 1978).
2. For further discussion of this approach see **Community Economics** by Ron Shaffer (Iowa State University Press, 1989) and Ron Shaffer, *Is Sustainable Regional Economic Development Possible?* **Australian Journal of Regional Studies** 1 (1):21-30 (1995).
3. A good reference for the role of planning in community development can be found in **Leadership for the Common Good: Tackling Public Problems in a Shared-power World** by John M. Bryson and Barbara C. Crosby (Jossey-Bass Publishing, 1992).
4. Ibid.
5. Strategies for community economic development are more fully discussed in **Nonmetropolitan Industrial Growth and Community Change** by Gene F. Summers and Arne Selvik (eds.) (Lexington Books) and **Community Economics** by Ron Shaffer (Iowa State University Press, 1989).
6. See also **Creating an Economic Development Action Plan**, by Thomas S. Lyons and Roger E. Hamlin. (Praeger, 1991).

Guide to Community Planning in Wisconsin

APPENDIX 1 - RESOURCES

Where to Find Specific Kinds of Information

This appendix is intended to assist local communities with collecting information for their planning processes. It offers ideas on what information a community may want to collect and where that information might be found. Information can be obtained from a variety of sources. The availability of information and resources may vary by community.

Human Made Environment—Public

<i>Type of Information to Collect</i>	<i>Potential Information Sources</i>	<i>Providers</i>
Transportation	<ul style="list-style-type: none"> • Road classification maps • State Highway maps • Regional transportation maps 	Municipal/County government, libraries, Railroad companies, RPCs, WisDOT
Sewer Water Drainage Solid Waste	<ul style="list-style-type: none"> • Utilities maps • Utilities master plans • Capital Improvement Programs • Drainage Maps • USGS maps • Field surveys, inventories • Interviews with local service providers 	Municipal/County government, libraries, local providers, USGS
Emergency and Public Safety Schools Parks and Recreation Libraries and Public Buildings	<ul style="list-style-type: none"> • Local government budget documents • Master plans • Field surveys, inventories • Interviews with local service providers • Tourism maps and guides 	Municipal/County government, libraries, local providers, chambers of commerce
Historical/Archeological Resources	<ul style="list-style-type: none"> • Publications • Maps • Inventories • Historical documents 	Libraries, State Historical Society of Wisconsin

Guide to Community Planning in Wisconsin

Human-made Environment— Private

<i>Type of Information to Collect</i>	<i>Potential Information Sources</i>	<i>Providers</i>
Land Use Inventory <ul style="list-style-type: none"> • Residential Uses • Commercial • Warehouse • Industrial • Civic/Institutional • Forested Land • Vacant/Undeveloped • Agricultural: Crops • Agricultural: Animals • Agricultural support 	<ul style="list-style-type: none"> • Aerial photography • Land cover/land use maps • Assessors maps/records • Field surveys, inventories • Topographical maps • Satellite imagery 	Municipal/County Government, DNR, WisLINC, State cartographers office, County land information offices, State land information program, USGS
Historical/Archeological Resources	<ul style="list-style-type: none"> • Publications • Maps • Inventories • Historical documents 	Libraries, State Historical Society of Wisconsin

Population Characteristics

<i>Type of Information to Collect</i>	<i>Potential Information Sources</i>	<i>Providers</i>
Population Size <ul style="list-style-type: none"> • Number of People • Number of Housing Units • Number of Households Population Composition <ul style="list-style-type: none"> • Age • Race • Income • Education Population Projections	U.S. Census Information (City and County Data Book, Census of Population and Housing) Wisconsin Annual Population Estimates (County, City, Village and Township) Wisconsin Population Projections (County, City, Village and Township)	Municipal/County Government, Libraries, Department of Administration, Applied Population Lab, University of Wisconsin-Madison, WisPOP, U.S. Census Bureau

Economic and Employment

<i>Type of Information to Collect</i>	<i>Potential Information Sources</i>	<i>Providers</i>
Existing Economic Conditions Employment by industry type (Standard Industrial Classification) Unemployment Rates (existing and historical) Labor force estimates by occupation group Economic and Employment projections	U.S. Census Data (County Business Patterns, Census of Manufacturing, Business, Wholesale trade, and selected services) State of Wisconsin Data	Municipal/County Government, WisPOP, Department of Workforce Development, U.S. Census Bureau
Tax Base Data	Assessors records	Local government offices

Guide to Community Planning in Wisconsin

Natural Environment

<i>Type of Information to Collect</i>	<i>Potential Information Sources</i>	<i>Providers</i>
Floodplains	Federal Emergency Management Administration (FEMA) floodplain maps, Floodplain insurance rate maps	Municipal/County Government, Libraries, FEMA, DNR, WisLINC
Climate	Climatological Records	Extension offices, universities, radio and television stations
Topography	USGS Maps	Municipal/County Government, Libraries, WisLINC, USGS
Surface water and watersheds	Watershed Maps	<i>Municipal/County Government</i> , Libraries, DNR
Wetlands and Protected Waters	<ul style="list-style-type: none"> • National Wetland Inventory (NWI) maps • Protected Water Inventory (PWI) maps • Local inventories 	Municipal/County Government, Libraries, DNR
Groundwater	Groundwater maps	Municipal/County Government, DNR
Geology	Geologic Maps	USGS, WisLINC
Soils	Soils survey and other soil maps	Municipal offices, libraries, WisLINC, County land information offices, State land information program
Vegetation	Land use/land cover maps	WisLINC, State cartographers office, County land information offices, State land information program

How to Contact Organizations

<i>Department of Administration</i>		
Central Office	101 E. Wilson Post Office Box 7864 Madison, WI 53707-7864	(608) 266-2309 http://www.doa.state.wi.us/
<i>Office of Land Information Services</i>		http://www.doa.state.wi.us/olis/
<i>Bureau of Intergovernmental Affairs (Demographic Services)</i>		http://www.doa.state.wi.us/deir/boi.htm (population stats)

Guide to Community Planning in Wisconsin

Department of Agriculture Trade and Consumer Protection (DATCP)

Central Office	2811 Agriculture Drive Madison, WI 53704	(800) 422-7128 http://badger.state.wi.us/agencies/datcp
Farmland Preservation		(608) 224-4634
Land & Water Resource Plans		(608) 224-4613

Department of Commerce

Central Office	201 West Washington Ave. Madison, WI 53703	(608) 266-1018 http://badger.state.wi.us/agencies/commerce/
Division of Community Development	201 West Washington Ave. PO Box 7970 Madison, WI 53707	(608) 267-3895

Department of Natural Resources (DNR)

Central Office	101 South Webster St. 6 th Floor Madison, WI 53707	(608) 266-8852 http://www.dnr.state.wi.us/
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District Offices

Lake Michigan	Box 10448, 1125 N. Military ave Green Bay, WI 54317	(920) 492-5816
North Central	Box 818, 107 Sutliff Ave Rhinelander, WI 54501	(715) 369-8926
Northwest	Box 309 Spooner, WI 54829	(715) 635-4055
Southeast	Box 12436 Milwaukee, WI 53212	(414) 263-8677
Southern	3911 Fish Hatchery Road Fitchburg, WI 53711	(608) 275-3304
Western	Box 4001, 1300 West Clairmont Ave Eau Claire, WI 54702	(715) 839-3730

Area Offices

Antigo	Box 310 Antigo, WI 54409	(715) 627-4317
Black River Falls	Box 18, Route 4 Black River Falls, WI 54615	(715) 284-1424
Brule	Box 125 Brule, WI 54820	(715) 372-4866
Cumberland	Box 397 Cumberland, WI 54829	(715) 822-3590

Guide to Community Planning in Wisconsin

<i>Dodgeville</i>	Box 10, Route 1 Dodgeville, WI 53533	(608) 935-3368
<i>Eau Claire</i>	2004 Highland Ave. Eau Claire, WI 54701-4346	(715) 839-3769
<i>Green Bay</i>	200 North Jefferson, Suite 511 Green Bay, WI 54301	(920) 448-5142
<i>Horicon</i>	N 7725 Highway 28 Horicon, WI 53032	(920) 387-7878
<i>La Crosse</i>	3550 Mormon Coulee Road, Rm. 104 La Crosse, WI 54601	(608) 785-9010
<i>Madison</i>	2801 Coho Street, Suite 101 Madison, WI 53713	(608) 273-5970
<i>Marinette</i>	Box 16 Marinette, WI 54143	(715) 732-0101
<i>Oshkosh</i>	Box 2565 Oshkosh, WI 54903	(920) 424-4003 (920) 424-7885
<i>Park Falls</i>	Box 220 Park Falls, WI 54552	(715) 762-3204
<i>Spooner Ranger Station</i>	Box 160, Highway 70 West Spooner, WI 54801	(715) 635-4097
<i>Sturgeon Bay</i>	110 South Neenah Ave Sturgeon Bay, WI 54235	(920) 746-2860
<i>Wisconsin Rapids</i>	1681 2 nd Ave South, Rm. 118 Wisconsin Rapids, WI 54494	(715) 421-7815
<i>Woodruff</i>	8770 Highway J Woodruff, WI 54568-9635	(715) 358-9214

Wisconsin Housing and Economic Development Authority (WHEDA)

Central Office		(800) 33HOUSE or 334-6873 http://www.wheda.state.wi.us/
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Department of Transportation

Central Office	4802 Sheboygan Ave. Madison, WI 53705	(608) 266-8800 http://www.dot.state.wi.us/
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Department of Workforce Development

<http://www.dwd.state.wi.us/dwelmi/> For employment statistics
For information call: (608) 266-3131

Guide to Community Planning in Wisconsin

Office of the Governor

Mailing Address	P.O. Box 7863 Madison, WI 53707	Voice: (608) 266-1212 Fax: (608) 267-8983
Office Address	Room 115 East State Capitol Madison, WI	email: wisgov@mail.state.wi.us

Regional Planning Commissions

Bay Lake	Suite 211, Old Fort Square 211 North Broad way Green Bay, WI 54303	(920) 448-2820
Dane County	City-County Building, Rm 523 Madison, WI 53709	(608) 266-4317
East Central Wisconsin	132 Main Street Menasha, WI 54952	(920) 751-4770
Mississippi River	907 Main Street La Crosse, WI 54601	(608) 785-9396
North Central Wisconsin	City Hall, 407 Grant Street Wausau, WI 54401	(715) 845-4208
Northwest	302 Walnut Street Spooner, WI 54801	(715) 635-2197
Southeastern Wisconsin	916 North East Ave. Waukesha, WI 53817-1607	(414) 547-6721
Southwestern Wisconsin	426 Karrmann Library UW-Platteville Platteville, WI 53818	(608) 342-1214
West Central Wisconsin	124½ Gramh Ave. Eau Claire, WI 54701	(715) 836-2918

County Zoning Offices

Adams County Courthouse	Box 187 Friendship, WI 53934	(608) 339-422
Ashland County Courthouse	201 West Main Street, Rm. 109 Ashland, WI 54806-1652	(715) 682-7014
Barron County Courthouse	Agriculture Building Barron, WI 54812	(715) 537-6375
Bayfield County Zoning Department	Box 58 Washburn, WI 54891	(715) 373-6138
Brown County Office Building	111 North Jefferson St., Rm. 223 Green Bay, WI 54305-3600	(920) 448-4490

Guide to Community Planning in Wisconsin

Buffalo County Courthouse	Zoning & Emergency Gov. Office Alma, WI 54610-0600	(608) 685-6218
Burnett County Government Center	7410 CTH K, #101 Siren, WI 54872	(715) 349-2138
Calumet County Courthouse	206 Court Street, Rm 107 Chilton, WI 53014	(920) 849-1442
Chippewa County Courthouse	711 N. Bridge Street Chippewa Falls, WI 54729-1876	(715) 726-7940
Clark County Courthouse	517 Court Street, Rm. 107 Neillsville, WI 54456	(715) 743-5130
Columbia County Carl C. Frederick Building	Box 177 Portage, WI 53901	(608) 742-2191
Crawford County Zoning Office	111 West Dunn Street Prairie du Chien, WI 53821	(608) 326-0294
Dane County Zoning Office	City County Building, Rm. 116 Madison, WI 53709	(608) 266-9083
Dodge County Administration Building	127 E. Oak Street Juneau, WI 53039	(920) 386-3700
Door County Courthouse	421 Nebraska Street Sturgeon Bay, WI 54235-3670	(920) 746-2323
Douglas County Courthouse	1313 Belknap Street, Rm. 204 Superior, WI 54880	(715) 394-0380
Dunn County Zoning	800 Wilson Street Menomonie, WI 54751	(715) 232-1401
Eau Claire County Courthouse	731 Oxford Ave. Rm. 180 Eau Claire, WI 54703	(715) 839-2979
Florence County Courthouse	501 Lake Ave. Florence, WI 54121	(715) 528-3206
Fond du Lac County Courthouse City County Government Center	160 South Main St. Fond du Lac, WI 54935	(920) 929-3139
Forest County Courthouse	200 East Main Street Crandon, WI 54520	(715) 478-3893
Grant County Courthouse Annex	111 South Jefferson Street Lancaster, WI 53813	(608) 723-2848
Green County Zoning Office Pleasant View Annex	N3150 Hwy 81 Monroe, WI 53566	(608) 328-9423
Green Lake County Courthouse	492 Hill Street Green Lake, WI 54941	(920) 294-4027
Iowa County Courthouse	Dodgeville, WI 53533	(608) 935-5077
Iron County Courthouse	Hurley, WI 54534	(715) 561-5414

Guide to Community Planning in Wisconsin

Jackson County Courthouse	307 Main Street Black River Falls, WI 54615	(715) 284-0220
Jefferson County Courthouse	Room 214 Jefferson, WI 53549	(920) 674-7130
Juneau County Courthouse Annex	Room 16 Mauston, WI 53948	(608) 847-9391
Kenosha County Office of Planning	912 56 th Street, Rm. 7 Kenosha, WI 53140	(414) 653-6550
Kewaunee County Courthouse	613 Dodge Street Kewaunee, WI 54216	(920) 388-4410
La Crosse County Courthouse	Room 105 La Crosse, WI 54601	(608) 785-9722
La Fayette County Planning Office	Ag Center Darlington, WI 53530	(608) 776-4830
Langlade County Courthouse	800 Clermont Street Antigo, WI 54409	(715) 627-6206
Lincoln County Courthouse	1110 East Main Street Merrill, WI 54452	(715) 536-0333
Manitowoc County Planning and Park Commission	1701 Michigan Ave. Manitowoc, WI 54220	(920) 683-4185
Marathon County Courthouse	500 Forest Street Wausau, WI 54401-5568	(715) 847-5306
Marinette County Courthouse	1926 Hall Ave Marinette, WI 54143-0320	(715) 732-7535
Marquette County Courthouse	Box 21 Montello, WI 53949	(608) 297-9159
Menominee County Courthouse	Box 279 Keshena, WI 54135	(715) 799-3001
Monroe County Community Services Center	Box 21A, Route 2 Sparta, WI 54656	(608) 269-8738
Oconto County Courthouse	300 Washington Street Oconto, WI 54153-1621	(920) 834-6827
Oneida County Courthouse	Box 400 Rhineland, WI 54501	(715) 369-6130
Outagamie County Zoning Office	410 South Walnut Street Appleton, WI 53074	(920) 832-5255
Ozaukee County Administration Center	Box 994 Port Washington, WI 53074	(414)284-8313
Pepin County Courthouse	740 7 th Ave. West Durand, WI 54736	(715) 672-8897
Pierce County Courthouse	414 West Main Street Ellsworth, WI 54011	(715) 273-3531

Guide to Community Planning in Wisconsin

Polk County Zoning Office	100 Polk County Plaza Balsam Lake, WI 54810	(715) 485-3161
Portage County-City Building	1516 Church Street Stevens Point, WI 54481	(715) 346-1334
Price County Courthouse	Phillips, WI 54555	(715) 339-3272
Racine County Planning & Development	142000 Washington Ave. Sturtevant, WI 53177	(414) 886-8470
Richland County Courthouse	181 W. Seminary Richland Center, WI 53581	(608) 647-2447
Rock County Courthouse	51 South Main Street Janesville, WI 53545	(608) 757-5587
Rusk County Courthouse	311 Miner Avenue East Ladysmith, WI 54848	(715) 532-2156
St. Croix County Courthouse	1104 Carmichael Road Hudson, WI 54016	(715) 386-4680
Sauk County Courthouse	515 Oak Street Baraboo, WI 53913	(608) 355-3285
Sawyer County Zoning Administration	Box 668 Hayward, WI 54843	(715) 634-8288
Shawano County Courthouse	311 North Main Street Shawano, WI 54166	(715) 526-6766
Sheboygan County Courthouse	615 North 6 th Street Sheboygan, WI 53081	(920) 459-3060
Taylor County Zoning	224 South 2 nd Street Medford, WI 54451	(715) 748-1485
Trempealeau County Courthouse	Box 67 Whitenall, WI 54773	(715) 538-2311
Vernon County Courthouse	Sanitarian and Zoning Office Viroqua, WI 54665	(608) 637-7018
Vilas County Courthouse	Box 369 Eagle River, WI 54521	(715) 479-3620
Walworth County Courthouse Annex	W3929 County NN Elkhorn, WI 53121	(414) 741-3394
Washburn County Courthouse	Zoning Department Shell Lake, WI 54871	(715) 468-2666
Washington County Courthouse	432 East Washington Street, Rm. 150 West Bend, WI 53095-7986	(414) 335-4445
Waukesha County Park & Planning Commission	500 Riverview Ave. Waukesha, WI 53188	(414) 549-3012
Waupaca County Courthouse	811 Harding Street Waupaca, WI 54981	(715) 258-6255

Guide to Community Planning in Wisconsin

Waushara County Courthouse	Box 149 Wautoma, WI 54982-0149	(920) 787-7819
Winnebago County Planning & Zoning Department	415 Jackson Street Oshkosh, WI 54903-2808	(920) 236-4840
Wood County Courthouse	400 Market Street Wisconsin Rapids, WI 54495-8095	(715) 421-8466

Wisconsin State Legislature

Legislative Hotline (800) 362-9472

<http://folio.legis.state.wi.us/cgi-bin/folioisa.dll/Stats.nfo>

<http://folio.legis.state.wi.us/>

Searchable Data Bases of Statutes, Bills, Acts, Legislative Journals, etc.

<http://www.legis.state.wi.us/>

<http://www.legis.state.wi.us/rsb/stats/html>

To find Adobe Acrobat Versions of Statutes

State Appellate Court Opinions

<http://www.courts.state.wi.us/>

GIS Resources— Geography Resources

Wisconsin Land Information Program

<http://badger.state.wi.us/agencies/wlib/>

University of Wisconsin— Extension

Information— (608) 262-3980

<http://www.uwex.edu/>

Wisconsin Historical Society

816 State Street
Madison, WI 53706

(608) 264-6400

Federal Emergency Management Agency— FEMA

FEMA— Flood Map Distribution Center

1-800-358-9616 or 1-800-638-6620

United States Census Bureau

(301) 457-4100

<http://www.census.gov>

Guide to Community Planning in Wisconsin

United States Geologic Survey—USGS

1-800-USA-MAPS

List of USGS map dealer in Wisconsin
<http://www-nmd.usgs.gov/esic/usimage/test/wi.html>

Other Wisconsin Planning Web Resources

COMMUNITY DEVELOPMENT BLOCK GRANT— ECONOMIC DEVELOPMENT (CDBG-ED) PROGRAM

<http://badger.state.wi.us/agencies/dod/html/cdgin806.html>

THE WISCONSIN MAIN STREET PROGRAM

<http://badger.state.wi.us/agencies/dod/html/mains959.html>

WISCONSIN COMMUNITY DEVELOPMENT BLOCK GRANT FOR PUBLIC FACILITIES (CDBG-PF)

<http://badger.state.wi.us/agencies/dod/html/cdbgp951.html>

TAX INCREMENTAL FINANCING

<http://badger.state.wi.us/agencies/dod/html/tif815.html>

Guide to Community Planning in Wisconsin

APPENDIX 2 - Ethical Principles in Planning

Adopted by the American Planning Association/American Institute of Certified Planners (May 1992)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community. Section A presents the necessary elements in such a view.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants. Section B presents specific standards.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

Section A. The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. recognize the rights of citizens to participate in planning decisions;
2. strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. assist in the clarification of community goals, objectives and policies in plan-making;
5. ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. strive to protect the integrity of the natural environment and the heritage of the built environment;
7. pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Guide to Community Planning in Wisconsin

Section B. Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker;
3. define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. serve as advocates only when the client's objectives are legal and consistent with the public interest;
8. not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
9. not use confidential information acquired in the course of their duties to further a personal interest;
10. not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. not misrepresent facts or distort information for the purpose of achieving a desired outcome;
12. not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

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