WISCONSIN LEGISLATIVE COUNCIL
INFORMATION MEMORANDUM

Comprehensive Planning

The 1999-2001 Biennial Budget Act contained provisions relating to comprehensive planning at the local level. The comprehensive planning statute, s. 66.1001, Stats., was most recently amended in the 2009-10 session. Under the comprehensive planning statute, beginning on January 1, 2010, if a local governmental unit, defined as a county, town, city, village, or regional planning commission, enacts or amends an official mapping ordinance, zoning ordinance, or shoreland or wetland zoning ordinance, the ordinance must be consistent with that local governmental unit's comprehensive plan. Because the legislation potentially affects every general purpose unit of local government in the state, it has generated widespread interest.

THE COMPREHENSIVE PLAN

As defined in the statute, a comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit. Adopting a comprehensive plan is only one step in the process and is not a self-implementing document; it is implemented through other decisions made by the community following the guidance provided in the plan.

The comprehensive planning statute specifies the contents for comprehensive plans adopted by local governmental units (cities, villages, towns, and counties). The statute describes the nine "elements" to be included in a comprehensive plan. Each of the elements is described in general terms that focus on the required contents for each element. Of the nine elements, one is background information (issues and opportunities) and two are procedural (intergovernmental cooperation and implementation). The other six elements are the objectives, policies, goals, and programs of the plan (housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; and land use).

The statute does not indicate the required degree of specificity in the various plan elements. The required contents of the elements are listed, but the statute does not indicate how much information must be collected or how much detail must be included in the plan. This issue may be the subject of future litigation regarding the comprehensive planning statute. It is unclear whether a court will determine that a comprehensive plan that has vague objectives and contains relatively little detail will satisfy the requirement of the statute regarding the contents of the comprehensive plan.

Local governmental units may make all decisions regarding how the local comprehensive plans are organized. Local governmental units, following the statutory procedures, may build upon current plans or adopt new ones, adopt combined or separate plans, adopt multiple plans with respect to the same subject, or adopt plans in conjunction with other local governmental units.

It should also be noted that the statute does not invalidate any preexisting plans adopted before January 1, 2010. Those plans may remain intact, even though they are not adopted using the procedural requirements for adopting comprehensive plans in s. 66.1001 (4), Stats., and even if the preexisting plans do not contain all of the elements required by the statute, although the preexisting plans may need to be expanded.

PROCEDURES FOR ADOPTING COMPREHENSIVE PLANS

The statute provides for public participation in the development of a comprehensive plan and requires the plan to be adopted by ordinance. The governing body of a local governmental unit must adopt written procedures that provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments. Opportunity for the local governmental unit to respond is required, but the statute does not prescribe how a response, if any, should be provided. The written procedures must be designed to foster public participation, including open discussion in every stage of the preparation of a comprehensive plan.

THE CONSISTENCY REQUIREMENT

The core concept of the comprehensive planning statute is the requirement in s. 66.1001 (3) that, beginning on January 1, 2010, if a local governmental unit enacts or amends certain ordinances, the ordinances listed in the statute must "be consistent with" that local governmental unit's comprehensive plan. Under the statute, the following types of ordinances are subject to this statutory requirement: official mapping, local subdivision, zoning, and shorelands or wetlands zoning.

The law delays the start of the consistency requirement under two limited circumstances:

- If a local governmental unit has applied for but has not received a comprehensive planning grant from the Department of Administration (DOA), the consistency requirement is delayed until January 1, 2012. These local governmental units must also adopt a resolution stating that they will adopt a comprehensive plan that will take effect not later than January 1, 2012.

- The DOA has the discretionary authority to grant local governmental units that have received a comprehensive planning grant a time extension to adopt a comprehensive plan. The consistency requirement will not apply until the expiration of the extension granted by DOA.

It appears that the consistency requirement applies only to actions of a political subdivision in relation to its own comprehensive plan. The statute does not require consistency in decision-

making either between adjacent political subdivisions (i.e., cities and towns) or overlapping political subdivisions (i.e., counties and towns).

The only guidance for political subdivisions regarding consistency is the simple statutory statement that the listed ordinances must be consistent with comprehensive plans. The statute defines "consistent with" to mean furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.

There is no direct penalty in the comprehensive planning statute for a local governmental unit that does not adopt a comprehensive plan, but nonetheless makes decisions that are subject to the consistency requirement. However, if there is no comprehensive plan and as a result the consistency requirement is not met, the consequences for enforcement of existing zoning ordinances is unclear and will likely be resolved through litigation after January 1, 2010.

There is no state administrative agency charged with overseeing the local decision-making process or ensuring that political subdivisions adopt comprehensive plans and there is not yet any Wisconsin case law on this issue. However, given the importance of local land use decisions and the value of proposed new property development, it is reasonable to expect that there will be court cases on the consistency issue. Thus, the comprehensive planning statute will presumably be "enforced" through lawsuits or the threat of lawsuits.

A local governmental unit that does not make any of the specified land use decisions (primarily towns that are either unzoned or subject to county zoning, and that do not regulate subdivisions) should have no need to adopt a comprehensive plan as a result of the consistency requirement. However, there may be other reasons for such a town to adopt a comprehensive plan, such as informing the county as to the town's preferences for county land use decisions.

The statute acknowledges in s. 66.1001 (4) (b), Stats., that plans may be amended. However, the statute does not define the appropriate scope of amendments, or whether amendments are expected to be comprehensive or narrow.

PLANNING GRANTS TO LOCAL UNITS OF GOVERNMENT

To assist local governmental units in developing comprehensive plans, the law provides for state funded comprehensive planning grants. The grant program is administered by DOA through the Division of Intergovernmental Relations. Grant applications are ranked competitively, based on statutory criteria that give preference to planning efforts that:

- Address intergovernmental issues.
- Address specified local, comprehensive planning goals.
- Identify "smart growth areas," defined as areas that will enable the development and redevelopment of lands with existing infrastructure and municipal, state, and utility services, where practicable, or that will encourage efficient development patterns that are both contiguous to existing development and at densities that have relatively low municipal, state governmental, and utility costs.

- Include development of implementing ordinances.
- Will be completed within 30 months.
- Provide opportunities for public participation throughout the planning process.

The grant program requires local matching funding and gives priority to cooperative planning efforts.

LAND USE REGULATION PRIOR TO THE COMPREHENSIVE PLANNING STATUTE

Authority for local land use regulation predated, by many decades, the enactment of the comprehensive planning statute in the 1999-2000 Legislative Session. The core of local land use regulation is in the general zoning enabling statutes, which authorize local governmental units to establish districts such as residential, commercial, manufacturing, and agricultural districts, and establish permitted uses, conditional uses, and prohibited uses in each district, and which mandate zoning regulations for shoreland, wetlands, and floodplain zoning. In addition to the zoning authorization and mandates, various statutes and the police power of local governmental units allow for regulations that may affect land use, such as regulation of junkyards or razing dilapidated buildings but are not part of the zoning ordinances. The comprehensive planning statute does not constrain or expand any of this other local regulatory authority.

The requirement for political subdivisions to undertake planning as part of the adoption of general zoning ordinances also predated the enactment of the comprehensive planning statute, although earlier statutes and court cases in Wisconsin were not clear as to whether consistency was required between planning and zoning. However, prior to the enactment of the comprehensive planning statute, a political subdivision could choose to plan in the comprehensive manner similar to that envisioned by s. 66.1001, Stats., and could make its zoning decisions consistent with its plan, and could require its decisions to have this consistency.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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