



Wisconsin Briefs

from the Legislative Reference Bureau



Brief 04-7

May 2004

SMART GROWTH AFTER FIVE YEARS

Wisconsin's comprehensive planning program known as "Smart Growth" has been in place for almost five years. Smart Growth is a program to facilitate an increased level of planning by local government in Wisconsin. A large number of Wisconsin communities have participated in or are currently participating in the program. This brief discusses the origin and aims of Smart Growth, along with the evolution of the program, and concerns about its implementation.

Origin of Smart Growth: 1999 Act 9

The Smart Growth program was created by 1999 Wisconsin Act 9, the biennial budget act for 1999-2001. The program, administered by the Department of Administration (DOA) and the Wisconsin Land Council, created a new framework for municipal planning and provided a grant program to assist counties, cities, villages, towns exercising village powers, and regional planning commissions in creating new plans.

Nine Elements of a Comprehensive Plan

Prior to 1999 Act 9, Wisconsin law did not specify in any great detail what should be included in a local government's comprehensive plan. Smart Growth, as detailed in Section 66.1001, Wisconsin Statutes, specifies that plans enacted after October 1999 must include nine distinct elements touching on various aspects of land use:

Issues and Opportunities: Background information on the local government unit and a statement of its objectives, policies, goals, and programs;

Housing: Outline of the unit's existing housing stock and its programs to promote the development of a range of housing choices;

Transportation: Plans for the future development of various modes of transportation within the unit and how this will relate to regional and state transportation plans;

Utilities and Community Facilities: Plans for the future development of a variety of utilities and community facilities, including sewers, water supply, solid waste disposal, water treatment, recycling, parks, telecommunications, power plants and transmission lines, cemeteries, health care, police and fire services, libraries, and schools;

Agricultural, Natural, and Cultural Resources: Compilation of policies and programs for the conservation and effective management of natural resources, including groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, surface water, floodplains, wetlands, wildlife habitat, mineral resources, parks and recreational resources, and historical and cultural resources;

Economic Development: Compilation of goals and programs to maintain and expand the economic base of the unit, including an analysis of the local labor force and the unit's ability to retain and attract future business, plus provisions for promoting the redevelopment of environmentally contaminated sites;

Intergovernmental Cooperation: Proposals for joint planning, decision making, and conflict resolution with other jurisdictions, including school districts and neighboring local governments, and analysis of the unit's relationship to regional and state government;

Land Use: Description of amount, type and density of existing land use along with a plan for future development and redevelopment of public and private property, including 20-year projections for land uses and utility service areas;

Implementation: Description of how the preceding eight elements will be integrated and how progress toward the plan goals will be measured, plus a defined process for updating the plan itself at least once every 10 years.

The Smart Growth law also requires that the municipality hold hearings before the adoption of the comprehensive plan.

Consistency Requirement

Prior to the enactment of the Smart Growth initiative, comprehensive plans not only lacked the structure of the nine elements outlined above, but were strictly advisory. A municipality's actions, such as zoning or road construction, might in practice be much different from its comprehensive plan. Under Smart Growth, beginning on January 1, 2010, a municipality must act in conformity with its comprehensive plan, or it may not perform certain actions integral to municipal government, such as annexation, plat approval, or zoning.

Smart Growth Grant Program

Local units of government going through the planning process are eligible for grants under a DOA program funded at \$2 million per year. Subject to availability of funds, applicants are entitled to 50% of a

base funding level set by DOA based on the municipality's population up to a maximum of 75% of the cost of the proposed planning process. Priority is given to applicants on the basis of a point system that reflects criteria set forth by Section 16.965 (4), Wisconsin Statutes. Thirty percent of the total score relates to planning efforts as they address the interests of overlapping or neighboring jurisdictions; 25% relates to the coherent and consistent manner in which the required elements of the plan are addressed; 20% relates to the way the plan identifies "smart growth" areas – those areas where growth is most desirable; 12% relates to the inclusion of implementing ordinances; 12% relates to the provisions for public participation in the planning process; and 1% relates to the contemplated completion of planning efforts within 30 months of the grant award.

Because the cooperation of various units of local government is of increasing concern to land use planners, DOA offers incentives to neighboring governments to go through the Smart Growth planning process together. "Multijurisdictional" planning gives municipalities the opportunity for more money, a better chance of winning a grant, and allows them to take from 36 to 48 months to complete the planning process, as opposed to 30 to 42 months allowed for individual applicants. Multijurisdictional plans can result in a single plan for all jurisdictions participating, or produce a single plan with an individual planning document for each participating jurisdiction. Multijurisdictional planning can also consist of a single coordinated planning process that generates an individual plan for each participating jurisdiction.

According to information compiled by DOA, as of February 11, 2004, 69 cities, 403 towns, 125 villages, and 23 counties have received grants and are undergoing or have completed their planning process. This constitutes about one-third of all municipali-

ties and counties in Wisconsin. DOA has disbursed almost \$10 million in grant money since 2001. As the program continues, the option of multijurisdictional planning is becoming more popular. In the early years of the grant program, most grants were given to individual applicants. Recently, the overwhelming majority of successful applications have been multijurisdictional.

Questions About Smart Growth

The five years of the Smart Growth initiative have not been without controversy. One of the most controversial aspects of the program is the compliance requirement found in Section 66.1001 (3), Wisconsin Statutes. The realization that, beginning on January 1, 2010, all land use decisions will have to conform to a local governmental unit's comprehensive plan alarms some local governments, particularly towns that have little experience with land use planning or zoning. Some are simply critical of the fact that Smart Growth was enacted as part of a budget bill with very little public notice or discussion. There is even some question as to whether municipalities are actually required to participate in Smart Growth, and whether or not the compliance requirement will in fact bind local governments to their plans. Some also fear that the list of local government functions that are subject to the comprehensive plan under Smart Growth is too burdensome.

There has been no ruling by a court or other authority as to whether municipalities will actually be stripped of their powers for noncompliance with Smart Growth requirements. A recent decision by the Wisconsin Court of Appeals, however, did allude to this possibility. In *Step Now Citizens Group v. Town of Utica Planning and Zoning Committee* (264 Wis. 2nd 662), the Court of Appeals ruled that in view of the Smart Growth law requiring conformity of zoning laws with comprehensive plans beginning on January

1, 2010, municipalities are *not* required to conform prior to that date. It was the first time a Wisconsin court has addressed the possible implications of Smart Growth in 2010 and beyond.

2003 Legislation Relating to Smart Growth

In response to these concerns, the legislature considered a number of bills dealing with the Smart Growth program during the 2003 legislative session. Two of these were signed into law.

2003 Wisconsin Act 233 (Assembly Bill 608) limits the number of local government functions that must be consistent with the comprehensive plan. Under the act, various activities relating to municipal boundaries, such as annexation, incorporation, consolidation, detachment of territory, cooperative boundary agreements, and municipal boundary agreements, are not required to meet the compliance requirements of Smart Growth. Extraterritorial plat approvals, transportation facility improvement, agricultural preservation plans, impact fee ordinances, land acquisition for recreational areas and parks, and construction site erosion and storm water management ordinances are also exempt. Requirements that platting, mapping, and zoning be consistent with the comprehensive plan are retained. A general requirement that "Any ordinance, plan or regulation of a local governmental unit that relates to land use" be in compliance with the comprehensive plan is also repealed. The act also reiterates that any comprehensive plan adopted by a regional planning commission is only advisory in its applicability to local governments.

2003 Wisconsin Act 307 (Assembly Bill 728) makes changes to the notification obligations of municipalities implementing the Smart Growth process. Specifically, the bill requires municipalities to provide written notices of hearings relating to imple-

mentation of a comprehensive plan to persons who have registered nonmetallic mineral deposits, and any leaseholders of nonmetallic mineral resources, who have requested notification in writing.

The legislature also considered two other bills dealing with Smart Growth that failed to pass.

Assembly Bill 750 would have permitted any town that has not enacted a comprehensive plan to disapprove of a proposed amendment to a county zoning ordinance.

Assembly Bill 435 would have repealed the Smart Growth program in its entirety, while leaving intact the previously existing provisions relating to local planning.