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Land Use Tracker

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2010 UPDATES TO WISCONSIN'S COMPREHENSIVE PLANNING LAW

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On May 18, 2010, Governor Doyle signed into law 2009 Wisconsin Act 372 amending Wisconsin's 1999 local comprehensive planning law. The amendments extend the beginning of the consistency requirement for certain communities and clarify several parts of the law. The changes were supported by many of the organizations that came together in the late 1990s to create the 1999 comprehensive planning law including the Wisconsin Realtors Association, 1000 Friends of Wisconsin, The Wisconsin Towns Association, the Wisconsin Builders Association, and the League of Wisconsin Municipalities.

Delay of the Consistency Requirement for Certain Communities

Prior law required that beginning on January 1, 2010, certain zoning, subdivision and official mapping ordinances needed to be consistent with a local comprehensive plan. Act 372 delays the start of this requirement for two limited categories of local governments:

- 1) Act 372 delays the January 1, 2010, consistency requirement until January 1, 2012, for those local governments that have *applied for but have not received* a comprehensive planning grant from the Wisconsin Department of Administration (DOA). These local governments must also adopt a resolution stating that they will adopt a comprehensive plan by January 1, 2012.

For a number of years after the comprehensive planning law was passed, state funding for local comprehensive planning was not sufficient to meet the demand for grants so a number of communities that applied for grants did not receive funding. Some of these communities applied in later years and received grants. Some communities that were denied comprehensive planning grants found other

funding sources to support local comprehensive planning. This delay provision only applies to the limited number of communities that applied for a DOA comprehensive planning grant, were denied the grant, and have not yet adopted a comprehensive plan.

2) Act 372 gives the DOA the discretionary authority to grant local governments *that have received a comprehensive planning grant* from the DOA a time extension to adopt a comprehensive plan. During the period of the extension, the local government is exempt from the requirement that certain ordinances be consistent with the local comprehensive plan.

It often takes several years to prepare a comprehensive plan. A number of local communities that have received grants were not able to adopt a comprehensive plan by January 1, 2010. These local governments can apply to the DOA for an extension of time within which to complete their comprehensive plan. The consistency requirement will not apply until the expiration of the extension granted by DOA. For example, if a community applies for an extension until February 23, 2011, the consistency requirement will not begin until after February 23, 2011.

Towns Do Not Need Village Powers to Adopt a Comprehensive Plan

Act 372 clarifies that towns do not need village powers to adopt a comprehensive plan. The original comprehensive planning law stated that towns “that exercise village powers under s. 60.22(3)”¹ could adopt a comprehensive plan. Act 372 deleted that language and gives town boards the express authority to prepare and adopt a comprehensive plan without village powers.

A number of towns that do not have their own zoning, subdivision, and/or official mapping ordinances are interested in adopting comprehensive plans but they do not have village powers.² This allows those town boards to adopt comprehensive plans. However, the town may need village powers to carry out the actions called for in the plan. For example, towns are required to have village powers before they can adopt a zoning ordinance under section 60.62 of the Wisconsin Statutes.

The Comprehensive Plan is Not by Itself a Regulation

Act 372 attempts to clarify the legal status of the comprehensive plan. It states that a comprehensive plan is “a guide to the physical, social, and economic development of a local governmental unit” and that “[t]he enactment of a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation.” This change is not intended to diminish the role of the comprehensive plan.

Act 372 attempts to clarify that the comprehensive plan is the official statement of local government policy regarding the physical, social, and economic development of that community. However, the comprehensive plan is not a self-implementing document. It is implemented through other decisions made by the community following the guidance provided in the plan.

The requirement to adopt a comprehensive plan by ordinance has been a source of confusion. Some people think that since the comprehensive plan is adopted by ordinance, a local government can directly regulate land use based on the comprehensive plan alone – in other words, they do not need to adopt a zoning ordinance.³ Act 372 attempts to clarify that adopting a comprehensive plan is only one step in the process and local communities still need to take additional steps, such as adopting *other* ordinances, to actually carry out the plan. Any “regulatory” effect of the comprehensive plan comes indirectly through these other actions.

In some cases the decision to follow the policy guidance of a local comprehensive plan is exclusively that of the local community. For example, a local government decides that the priority for local road improvement projects will be based on a schedule outlined in their local comprehensive plan. State law does not dictate that local communities do this, but a local community may decide to follow its comprehensive plan for determining roadway improvements.

In other cases, however, state law *requires* that local communities follow the guidance provided in their local comprehensive plan. The requirement in section 66.1001(3) that the adoption and amendment of local zoning, subdivision, and

official mapping ordinances must be consistent with a local comprehensive plan is one such requirement. The requirement that the plan for a proposed tax increment financing district be in “conformity” with a local comprehensive plan, is another example.⁴

As a general policy guide, Act 372 also attempts to clarify that state law does not require that local communities include every detail in their comprehensive plan that will also appear in their local ordinances. For example, the comprehensive plan does not need to state that the community will follow a 15 foot side yard setback in the R-1 district. Again, as a matter of local discretion, a community might want to include such details in their comprehensive plan. Act 372 attempts to clarify that state law *does not require* that local comprehensive plans include this detail.

Clarifications to the Consistency Requirement

Act 372 attempts to clarify the consistency requirement by stating that “consistent with” means “furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.” This change attempts to incorporate the Wisconsin Supreme Court’s definition of “consistent” from the *Lake City Corp. v. City of Mequon*⁵ case. While this case predates the 1999 comprehensive planning law, the case discusses the interpretation of an older consistency requirement in the Wisconsin Statutes and provides helpful guidance for the future. According to the Supreme Court in the *Lake City* case, “consistent” means “not contradictory.”

This definition gives some discretion to local governments for how they interpret their local comprehensive plans. Local governments need to judge whether a proposed zoning ordinance contradicts the policies of the comprehensive plan. This definition attempts to clarify that state law does not mandate through the consistency requirement that all the detailed standards that are ultimately found in a local zoning ordinance also first need to be detailed in the local comprehensive plan.

While this definition only references the “objectives, goals, and policies” identified in the comprehensive plan, it is not intended to totally

ignore other things included in the comprehensive plan like specific programs and the future land use map. Programs in the comprehensive plan are supposed to be action steps that local communities plan to undertake to implement the objectives, goals, and policies of the comprehensive plan. The future land use map is supposed to be a graphic representation of the objectives, goals and policies of the community. The future land use map and programs identified in the comprehensive plan can therefore be helpful in determining whether a proposed ordinance is consistent with a comprehensive plan.

Act 372 also clarifies that only ordinances enacted or amended after January 1, 2010, need to be consistent with a local comprehensive plan. Prior to the passage of Act 372, section 66.1001(3) of the Wisconsin Statutes stated “[b]eginning on January 1, 2010, if a local unit of government engages in any of the following actions, those actions shall be consistent with that local governmental unit’s comprehensive plan.” While the original law included a long list of “programs and actions” that needed to be consistent with a local comprehensive plan, that list was amended by 2003 Wisconsin Act 233 to include only official maps, local subdivision regulations, general zoning ordinances, and shoreland/wetland zoning. However, the statutes did not use the same language for the various “actions” that needed to be consistent with the local comprehensive plan. For example the statutes referred to official maps “established or amended” under state law and referred to general zoning ordinances “enacted or amended” under the various local zoning enabling laws. The statutes did not include similar qualifying language for “local subdivision regulation” or “zoning of shorelands or wetlands”.

Act 372 removes the term “actions” and adds the “enacted or amended” language originally used for general zoning ordinances to the references for official mapping, local subdivision ordinances, and shoreland/wetland zoning ordinances. This change is intended to clarify that only the enactment or amendment of general zoning ordinances, official mapping ordinances, subdivision ordinances, and shoreland/wetland zoning ordinances need to be consistent with the local comprehensive plan.

In addition, Act 372 clarifies that only zoning, official mapping, and subdivision ordinances

enacted or amended *after January 1, 2010*, need to be consistent with the local government's comprehensive plan. It is important to remember that the Implementation Element of the comprehensive plan expressly requires that local comprehensive plans include the stated sequence for "proposed changes to any applicable zoning ordinances, official maps, or subdivision ordinances to implement the objectives, policies, plans and programs" identified in the local comprehensive plan. Act 372 attempts to confirm that the day after a local government adopts a comprehensive plan, state law does not require that local governments need to change their ordinances so they are immediately consistent with the comprehensive plan. As ordinances are revised, updated, or otherwise amended following the stated sequence articulated in the Implementation Element, communities need to ensure those changes are consistent with their local comprehensive plan. Since planning is oriented to the future, only future ordinance changes need to be evaluated for consistency with the comprehensive plan.

For example, if on June 25, 2010, the Town of Badger enacts Ordinance No. 10-23, amending parcel X on the zoning map from A-1 to R-2 (a "rezoning"), that ordinance must be consistent with the Town's comprehensive plan. As another example, the goal of the City of Cheeseland over the next 20 years is to redevelop an underused industrial area into a mixed use center with retail and residential uses. The current zoning ordinance designates the area "Industrial." The city does not immediately need to rezone the area for residential and retail uses, creating problems with nonconforming uses and not knowing exactly where the residential area will be located and where the retail area will be located. The city can wait several years for a development proposal that helps to implement the city's comprehensive plan and rezone the parcel at that time consistent with the city's comprehensive plan.

Finally, Act 372 repealed the language in section 236.13(1)(c) of the Wisconsin Statutes that stated that approval of a subdivision plat shall be conditioned upon compliance with a city, village, town, or county comprehensive plan. The intent behind the removal of this consistency requirement was that it was redundant with the requirement in section 66.1001(3) of the Wisconsin Statutes that

subdivision regulations must be consistent with the local comprehensive plan. The repeal of this section is not intended to diminish the role of the comprehensive plan when reviewing proposed subdivisions and local subdivision ordinances should require that proposed plats be consistent with the local comprehensive plan.

Only the Final Plan Needs to be Sent to Other Governments

Act 372 attempts to clarify that communities are not required by state statute to send a copy of the plan recommended for adoption by the plan commission to other local units of government, the DOA, a regional planning commission and the local public library. After the governing body adopts the comprehensive plan, only one copy of the final comprehensive plan needs to be sent to those entities listed in state statutes.

¹ Wis. Stat. § 66.1001(1)(a)2 (2007-2008).

² Many towns without village powers that have approved the application of county zoning within the town want to adopt a comprehensive plan to insure the town can fully participate in the county/town zoning partnership.

³ Local governments generally have three procedures to take some type of action or make a decision – by ordinance, resolution or motion. State law often specifies which procedure a local government must use. Many things that state law requires to be done by ordinance are not necessarily "regulations" such as setting the salary of the village president or establishing the process for canvassing absentee ballots in elections.

⁴ See Wis. Stat. § 66.1105(4)(g) for cities and villages and § 60.85(3)(g) for towns.

⁵ 207 Wis.2d 155, 558 N.W.2d 144 (1985).

For More Information

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View Act 372:
www.legis.state.wi.us/2009/data/acts/09Act372.pdf

CHANGES TO WISCONSIN'S PLATTING LAWS

By Renée Powers, Wisconsin Department of Administration, Plat Review

2009 Wisconsin Acts 376 and 399, signed by Governor Doyle on May 18, 2010, and published June 1, 2010, made significant revisions to Wisconsin's platting laws. All but one of the revisions took effect June 2, 2010.

The following changes apply as of June 2, 2010

Submittal time for final plat

Final plats must be submitted within 36 months following preliminary plat approval. A local unit of government may extend the time for submission of the final plat.

Wis. Stat. § 236.11(1)(b)

Process for determining substantial conformity

A professional engineer, planner or other person designated to review plats for a local unit of government shall determine if a final plat "substantially conforms" to the preliminary plat. This determination shall be given to the unit of government along with a recommendation for approval/denial of the final plat. The conclusion and recommendation are not required to be in writing but must be made part of the public record at the proceeding in which the final plat is being considered.

Wis. Stat. § 236.11(1)(c)

Compliance with existing ordinance

Preliminary plats or final plats, if no preliminary plat was submitted for that development, must comply with the local ordinance which was in effect when the plat was submitted. If an ordinance is revised while the plat is moving through the review process the new requirements cannot be applied to the plat.

Wis. Stat. § 236.13(1)(b)

Financial securities limited

The plat may be developed in phases as approved by the local unit of government. The amount of surety bond or other security shall be limited to the phase currently being constructed. Local units of government may not require that the security be provided sooner than is reasonably necessary before the installation of improvements begins.

Wis. Stat. § 236.13(2)(a)

Time limit for recording subdivision plats

Plats must be recorded within 12 months after the last approval and 36 months from the first approval. Recording time limits for CSMs have NOT changed.

Wis. Stat. § 236.25(2)(b)

Extraterritorial plat review of land use limited

Local units of government may not review a plat or CSM within their extraterritorial plat approval jurisdiction based upon the lands proposed use, unless the approval/denial is based upon a plan or regulations adopted under Wis. Stats. § 62.23(7a) (c) related to extraterritorial zoning.

Wis. Stat. § 236.45(3)(b)

The following change applies beginning January 2, 2011

Local ordinances may not be more restrictive than state statutes

Local ordinances may not have more restrictive time limits, deadlines, notice requirements or be more restrictive in other provisions of Wis. Stats. ch. 236 that provide protections for the subdivider.

Wis. Stat. § 236.45(2)(ac)

City, village, town and county ordinances must comply with these changes on or after January 2, 2011, or the ordinance cannot be enforced.

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www.legis.state.wi.us/2009/data/acts/09Act376.pdf

View Act 399:
www.legis.state.wi.us/2009/data/acts/09Act399.pdf

STATE SHORELAND DEVELOPMENT RULES UPDATED

By Gregg Breese, Wisconsin Department of Natural Resources

Forty years after they were first adopted, state shoreland development rules have been updated to better protect lakes and rivers while allowing property owners more flexibility on their land. These minimum statewide standards are just one tool Wisconsin uses to safeguard our shorelands for the future.

The state Natural Resources Board adopted revisions to the rules on November 13, 2009. The official rules were published February 1, 2010 and are available at www.legis.state.wi.us/rsb/code/nr/nr115.pdf. County governments have two years from the date of publication to update their shoreland development rules to be consistent with or exceed the state's rules.

Now and after the rules are enacted locally, owners of existing homes and buildings can keep what they have. They will not have to do anything different unless they propose a major change on their property, like remodeling their home, expanding it, or paving or covering more surfaces. Then, they may have to take steps to offset the potential impacts from their project: increased water runoff and pollutants, loss of plants to filter runoff and provide wildlife habitat, and impacts on their neighbors' and lake and river users' scenic views.

Key Shoreland Development Rule Provisions

Some Standards Remain the Same:

- ▶ Homes must still be set back 75 feet from the water.
- ▶ Minimum lot size requirements remain at 20,000 square feet and 10,000 square feet.

Some Standards Changed:

- ▶ Spending limits on repairs to existing non-conforming residences located within 75 feet of the water's edge have been eliminated.
- ▶ Expansion of an existing home closer than 75 feet from the water is now allowed in some cases: a property owner can build a second story or otherwise add-on vertically, if their existing house is at least 35-feet back from the water. Expansion of an existing home more than 75 feet from the water is still allowed.

- ▶ Property owners expanding the physical footprint of a non-conforming structure will be required to offset the environmental impact of the expansion by choosing from a number of options. Examples include reducing the amount of mowing next to the water, installing rain-gardens to absorb storm runoff, or re-planting native vegetation near the shoreline. Counties will set what the specific mitigation requirements are as they update their ordinances.

Some Standards Are New:

- ▶ A new standard caps the total amount of hard or "impervious" surfaces such as roofs, pavement and decks allowed on shoreland property. The caps apply only to properties within 300 feet of lakes or rivers, and they do not affect existing property owners unless the owners try to make major changes that would cover up more land with hard surfaces.
- ▶ No limitations would exist for additions or new buildings where the lot's impervious surfaces do not exceed 15 percent of the total lot size. Where the sum total of impervious surfaces is between 15 percent and 30 percent of the lot size, property owners would be required to take measures to offset the environmental impact of their proposed project.

Grant Assistance Available

Counties that wish to update their ordinances may apply for a lake or river planning grant in May of each year. \$5,000 grants are available to counties that plan to adopt the minimum statewide standards. In 2010, 47 counties applied for these grants.

Additional funds may be available to counties that plan to go beyond the state standards.

- ▶ Lakes - <http://dnr.wi.gov/lakes/grants/>
- ▶ Rivers - <http://dnr.wi.gov/org/water/rivers/grants/>

For More Information

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Questions and Answers:

www.uwsp.edu/cnr/uwexlakes/ecology/shorelands/mitigation/pdf_docs/faq_nr115_fall_2009.pdf



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CALENDAR OF EVENTS

Plan Commission Workshop

July 22, 2010 – AmericInn, Ashland, WI
www.uwsp.edu/cnr/landcenter/workshops.html

Chief Executives Workshop

August 18-20, 2010 – AmericInn, Ashland, WI
www.lwm-info.org

East Central Wisconsin Regional Planning Commission Mini Conference

August 27, 2010 – Liberty Hall, Kimberly, WI
www.eastcentralrpc.org

Growing Power's National-International Urban & Small Farm Conference

September 10-12, 2010 – Milwaukee, WI
www.growingpowerfarmconference.org

IAP2 Public Participation Certificate Program

September 13-17, 2010 – Chicago, IL
www.iap2.org/calendar.cfm

Upper Midwest Regional Planning Conference

September 22-24, 2010 – Mankato, MN
www.plannersconference.com

Wisconsin Counties Association Annual Conference

September 26-28, 2010 – Hilton Milwaukee City Center, Milwaukee, WI
www.wicounties.org

Wisconsin Towns Association Annual Convention

October 3-6, 2010 – La Crosse, WI
www.wisctowns.com

League of Wisconsin Municipalities Annual Conference

October 13-15, 2010 - Marriot West, Middleton, WI
www.lwm-info.org

Wisconsin Land Information Association Fall Regional Meeting

October 21-22, 2010 – Holiday Inn, Stevens Point, WI
www.wlia.org

Wisconsin Assoc. for Floodplain, Stormwater and Coastal Management

November 3-4, 2010 – Wilderness Hotel and Golf Resort, Wisconsin Dells, WI
http://wi.floods.org/Annual_Conference.htm

ESRI - Wisconsin User Group Conference

November 3-4, 2010 – Madison Marriott West, Madison, WI
www.ewug.org/Conference.html

Wisconsin Land and Water Conservation Association Conference

December 9-10, 2010 – Chula Vista Resort, Wisconsin Dells, WI
www.wlwca.org

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To receive this newsletter by email sign up at: www.uwsp.edu/cnr/landcenter/newsletters.html

Submit an Article!

If you would like to submit an article, please contact the managing editor, Rebecca Roberts. Your article should be 1,000 words or less, of statewide concern, and address a land use issue.

American Planning Association Audio/Web Conferences

June 30, 2010 – 2010 Planning Law Review
www.planning.org/audioconference

American Planning Association Monthly Webcasts

June 25, 2010 – Understanding the Unserviced Workforce
July 9, 2010 – Land Use Law
August 6, 2010 – Americans with Disabilities and Fair Housing Acts
August 13, 2010 – Wind and Utility Corridors
September 3 – Planning and Law Division, TBA
September 10 – Economic Development
www.utah-apa.org/webcasts.htm

Community Energy Leadership Webinar Series

June 30, 2010 – Introduction to Auditing Community Energy Use
July 28, 2010 – Basics of Energy Program Design
www.ecw.org/project.php?workid=2&resultid=414

Revitalizing Wisconsin's Downtowns Webinar Series

September 9, 2010 – Working Downtown
November 11, 2010 – Entertainment Downtown
<http://lgc.uwex.edu/Downtowns/>

For additional dates and information visit the online calendar of events

www.uwsp.edu/cnr/landcenter/events.html

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