

SEWRPC RECOMMENDATION REGARDING CONSISTENCY BETWEEN COMPREHENSIVE PLANS AND ZONING ORDINANCES AND MAPS¹

Section 66.1001 (3) of the *Wisconsin Statutes* requires that the following ordinances be consistent with a unit of government's comprehensive plan:

- Official mapping enacted or amended under Section 62.23 (6) of the *Statutes*.
- Subdivision ordinances enacted or amended under Section 236.45 or 236.46 of the *Statutes*.
- County zoning ordinances enacted or amended under Section 59.69 of the *Statutes*.
- City or village zoning ordinances enacted or amended under Section 62.23 (7) of the *Statutes*.
- Town zoning ordinances enacted or amended under Section 60.61 or 60.62 of the *Statutes*.
- Zoning of shorelands or wetlands in shorelands under Section 59.692 (for counties), 61.351 (for villages), or 62.231 (for cities) of the *Statutes*.

In 2010, the Wisconsin Legislature amended the comprehensive planning law to include the following definition: "Consistent with" means furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan" (Section 66.1001 (1) (am)). Beginning on January 1, 2010, County and local governments must use their comprehensive plan as a guide to ensure that implementation of zoning, subdivision, and official mapping ordinances adopted by the governing body (County Board, Common Council, Village Board, or Town Board) do not conflict with the recommendations of the comprehensive plan adopted by the governing body. If a conflict is found or would result from a proposed action, the County or local government has the option of amending its comprehensive plan. Plan amendments should follow the guidelines for plan amendments presented in the Implementation Element chapter of the unit of government's comprehensive plan and not be made arbitrarily.

The zoning ordinance is typically one of the primary implementation tools of a comprehensive plan. As such, it should substantially reflect and promote the achievement of plan goals, objectives, policies, and programs. A zoning ordinance and the accompanying zoning map are a legal means for both guiding and controlling development within a county or local government,² so that an orderly and desirable pattern of land use can be achieved by the plan design year that conforms to the plan and balances individual property rights with community interests and goals. The zoning ordinance contains provisions for regulating the use of property, the size of lots, the intensity of development, site planning, the provision of open space, and the protection of natural resources.

Following adoption of a comprehensive plan by the governing body, the appropriate County Board committee or the city, town, or village Plan Commission should initiate appropriate amendments to the zoning map to make it

¹ For more information about consistency between comprehensive plans and ordinances, see the 2007 article titled Exploring the Concept of "Consistency" under Wisconsin's 1999 Comprehensive Planning Law, available at <http://urpl.wisc.edu/people/ohm/consistency%20and%20the%20comp%20plan.pdf> and Zoning Practice Issue No. 11, Practice Consistency, November 2005, published by the American Planning Association. Both articles were written by Brian W. Ohm, J. D., Professor, Department of Urban and Regional Planning, University of Wisconsin- Madison.

² General zoning authority is exercised by each of the cities, villages, and towns in Ozaukee and Washington Counties; and by each city and village in Kenosha, Milwaukee, Racine, Walworth, and Waukesha Counties. General zoning authority in towns within Kenosha, Racine, Walworth, and Waukesha Counties is shared between each town and the county.

consistent with the concepts and proposals included in the plan, particularly the land use plan map in the Land Use Element of the comprehensive plan. Although one option would be to amend the zoning map to bring the map into strict conformance with the land use plan map soon after the comprehensive plan is adopted (that is, exactly match zoning districts to the land use plan map), this approach has disadvantages. Those disadvantages include zoning that could potentially accommodate “leapfrog” urban development (enclaves of urban development separated by agricultural or other rural uses), and/or development in areas that have not yet been provided with sanitary sewer, water, streets, or other necessary services. Another disadvantage is the potential creation of nonconforming uses in areas that are already developed, where the plan proposes redevelopment for another use (for example, an area zoned and historically used for industrial uses that is proposed to be redeveloped for residential or mixed use). Conversely, the zoning map should not permit the establishment of new uses that are not consistent with the land use plan map or other recommendations of the comprehensive plan, such as allowing residential development to occur in areas planned for commercial or industrial use.

To avoid the potential pitfalls outlined in the preceding paragraph, it is recommended that the following approach be used to update zoning maps following the adoption of a comprehensive plan:

- Areas of existing development (other than agricultural uses) should, over time, be placed in a zoning district that is consistent with the land use designation shown on the land use plan map. The Implementation Element chapter of the comprehensive plan should include a list of each category shown on the land use plan map and the corresponding zoning district(s). The comprehensive plan should serve as a guide to ensure that any future rezonings, land divisions, or official mapping actions are consistent with the plan. The comprehensive plan may include a map that indicates parcels that will be rezoned over time to bring the zoning map into conformance with the land use plan map. Rezoning to achieve consistency between the zoning map and the comprehensive plan will be considered if requested by the property owner. The County or local government may also initiate a rezoning to achieve consistency, subject to available staff and funding.
- Areas that are currently in agricultural use, and zoned for such use, but shown on the land use plan map for future urban development should remain in agricultural zoning. Rezoning that would accommodate residential, commercial, industrial, or other urban uses would be undertaken when a property owner submits a request for rezoning that specifies the proposed use of the property and, where required by the zoning or land division ordinance, a proposed site plan or subdivision plat; and where the governing body determines that utilities and other governmental services needed to serve the proposed development are in place and the proposed use is consistent with the comprehensive plan and other applicable ordinance requirements. An “urban reserve area” map may be included in the comprehensive plan to indicate parcels that are planned to be converted to urban use during the planning period. Another option would be to develop a series of land use plan phasing maps to provide a time frame for consideration of future rezoning from agricultural to urban use. Each “phasing” map would identify a time period during which a property owner could request a rezoning to a zoning district consistent with the land use plan category in specified areas within the county or local government.
- Areas that are currently in agricultural use and designated for agricultural use on the land use plan map should be zoned agricultural.
- Primary environmental corridors should be placed, and other natural resource areas, including secondary environmental corridors and isolated natural resource areas, may be placed, in a conservancy or other appropriate zoning district (such as a park or rural residential zoning district) at the time a preliminary plat, rezoning application, or other zoning approval is requested, based on a field delineation of natural resource boundaries. Generally, wetlands and surface waters should be placed in a Lowland Conservancy zoning district and woodlands, steep slopes, and other components of upland environmental corridors should be placed in an Upland Conservancy zoning district. Farmed wetlands located in an agricultural zoning district should remain in such zoning as long as the wetland is farmed. Wetlands identified as farmed wetlands on the Wisconsin Wetlands Inventory should be placed in a lowland conservancy district at the time farming activities on the wetland parcel cease and an application for residential or other urban development of the

parcel is approved by the unit of government having zoning authority. In addition, certain areas of environmental corridors and isolated natural resource areas will likely be further regulated by floodplain and shoreland ordinances.

These recommendations are general and should be refined by each county and local government, in consultation with the County or municipal attorney, governing body, plan commission, and planning staff.

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