

## **SEWRPC RECOMMENDATION REGARDING INCORPORATION OF CITY AND VILLAGE COMPREHENSIVE PLANS FOR EXTRATERRITORIAL AREAS INTO A COUNTY COMPREHENSIVE PLAN**

### **Introduction**

Section 59.69(3)(b) of the *Wisconsin Statutes* explicitly requires that a county development (comprehensive)<sup>1</sup> plan include, without change, the master (comprehensive) plan of a city or village adopted under Section 62.23(2) or (3), and the official map adopted by a city or village under Section 62.23(6) of the *Statutes*. Section 59.69(3)(e) of the *Statutes* further provides that a master plan or official map adopted under Section 62.23 “shall control” in unincorporated areas of a county; however, Section 59.69(3)(e) does not specifically require that city and village plans for their extraterritorial areas be included in the County comprehensive plan. There is no Statute requiring a county to incorporate town plans into the county comprehensive plan, with the exception of towns located in populous counties.<sup>2</sup> In addition, the comprehensive planning law did not alter any existing town, village, city, or county authorities or responsibilities with regard to planning, zoning, plat approval, extraterritorial authorities, annexations, or any other of the other myriad statutes and regulations that affect land use in Wisconsin.

The Statutes provide clear guidance that a county plan need not include city and village plans for extraterritorial areas where a county has established a regional planning department. In that case, Section 62.23(2) provides “that in any county where a regional planning department has been established, areas outside the boundaries of a city<sup>3</sup> may not be included in the (city) master plan without the consent of the county board of supervisors.” The Statutes do not define what is meant by a “regional planning department,” however.

The Wisconsin Department of Administration, which administers the comprehensive planning grant program, has not issued any guidance regarding the incorporation of city and village comprehensive plans for their extraterritorial areas into a county plan. This issue has not been litigated, nor has the Wisconsin Attorney General issued an opinion on the matter. In the absence of State agency or legal guidance, the question of whether and how city and village plans for their extraterritorial areas should be addressed in a county plan is one of many issues that must be resolved by each county during its comprehensive planning process, with input from local governments and other planning partners. Ideally, future land use recommendations in extraterritorial areas would be cooperatively determined by the affected city or village, town, and county. In reality, however, issues related to annexations and extraterritorial authorities are typically the most contentious issues between cities and villages and the adjacent towns.

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<sup>1</sup> Section 66.1001(1)(a) of the *Statutes* defines a comprehensive plan as a county development plan prepared or amended under Section 59.69(2) or (3); a city or village master plan adopted or amended under Section 62.23(2) or (3); a town master plan adopted under Section 62.23(2), where the town exercises village powers under Section 60.22(3); and a master plan adopted by a regional planning commission under Section 66.0309(8), (9), or (10).

<sup>2</sup> Section 59.69(3) of the *Statutes* requires a county with a population of at least 485,000 to “include and integrate” town comprehensive plans into the county plan. At this time, only Dane County meets the population threshold and includes town units of government.

<sup>3</sup> In accordance with Section 61.35 of the *Statutes*, the same provision would apply to villages.

### **SEWRPC Recommendation**

Although State law is ambiguous in terms of incorporating city and village plans for extraterritorial areas into a county comprehensive plan, the consistency requirement in Section 66.1001(3) of the comprehensive planning law clearly states that any local government that engages in official mapping, general or shoreland zoning, or subdivision regulation must carry out those actions in a way that is consistent with “that local governmental unit’s<sup>4</sup> comprehensive plan.” This requirement applies most directly to the land use element, and the land use plan map, of local comprehensive plans. Because the Statutes require the regulatory ordinances of a local government to be consistent with the local government’s comprehensive plan, it is SEWRPC’s recommendation that the county comprehensive plan incorporate the land use plan map and related recommendations of the unit of government that has zoning authority for the area in question, provided the local government recommendations are consistent with county goals, objectives, policies, and ordinances. Although subdivision and official mapping ordinances can also regulate the use of land, zoning is the primary regulatory tool used by county and local governments to determine and control land use.

Based on this recommendation, and assuming a city, town, or village plan is consistent with county goals, objectives, policies, and ordinances, the following would apply:

- The town land use plan map would be included in the county plan for those areas where a town zoning ordinance and map control, unless a boundary agreement is in place between a town and an adjacent city or village.
- The city or village land use plan map would be included in the county plan for those areas where a city or village zoning ordinance and map control. This would apply in areas within a city or village incorporated area, and within areas where a city or village extraterritorial zoning ordinance has been adopted under Section 62.23(7a) of the Statutes.
- The county would determine planned land uses, in consultation with the affected town, for those areas where a county zoning ordinance and map control, unless a boundary agreement is in place between a town and an adjacent city or village.
- In cases where a boundary agreement has been approved by a town and an adjacent city or village, the future land uses agreed upon under the terms of the agreement would be included in the county plan.

### **County Determination**

Although SEWRPC recommends a pragmatic approach based on zoning authority to address the issue of County plan recommendations for city and village extraterritorial areas, each county, with advice from the county corporation counsel, should determine how this issue is to be addressed in the county comprehensive plan.

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<sup>4</sup> Section 66.1001 (1)(b) of the Statutes defines a “local governmental unit” as “a city, village, town, county, or regional planning commission that may adopt, prepare, or amend a comprehensive plan.”