



Newsletter

AICP Commission Approves New Certification Maintenance Requirements

During the APA national meeting in April, the AICP Commission gave its final approval to the plan underway for well over a year to modify the continuing education requirements of AICP membership. The primary changes include a requirement that all AICP planners receive a minimum number of continuing education credits during each two-year period. In addition, APA will create a registration process for training providers to assure quality and planning-related content.

Details of the program are available on the APA website. The key elements include:

- 32 qualifying credits are logged in during each two-year reporting period. One CM credit is equivalent to one hour of training.
- A four-month grace period, beyond the two-year reporting cycle, may be used to complete the Certification Maintenance credit requirements.
- If AICP Certification Maintenance requirements are not met within four years,

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The WAPA Newsletter is published electronically four times each year by the Wisconsin Chapter of the American Planning Association to facilitate discussion among its members of planning issues in Wisconsin. Correspondence should be sent to:

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Submission of Articles: WAPA News welcomes articles, letters to the editor, articles from the WAPA districts, calendar listings, etc. Please send anything that may be of interest to other professional planners in Wisconsin. Articles may be submitted by mail, fax, or email. Articles may be edited for readability and space limitations prior to publication. Content of articles does not necessarily represent the position of APA, the WAPA Executive Committee, or the editor.

Submit articles by email attachment. Graphics are encouraged

Deadlines:

Winter issue: submit by January 15.
Spring issue: submit by March 15
Summer issue: submit by June 15
Fall issue: submit by September 15

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Visit the WAPA webpage for up-to-date news and information between issues of the WAPA Newsletter.

Monthly legal and legislative updates are now posted throughout the month. Look on the Events page for information about professional development programs sponsored by WAPA, APA, and other organizations with programming related to planning.


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- an AICP member will lose AICP certification and will be obliged to seek recertification in order to retain the AICP credential.
- A minimum of 1.5 credits will be on the topic of ethics and an additional 1.5 credits will be on the topic of current planning law. Credits in ethics and law cannot be carried over to the next reporting cycle.
 - Retired AICP members are exempt from the certification maintenance requirements and may maintain their certification without continuing education.
 - Special exemptions may be granted for personal or hardship reasons, such as parental leave, military service, and the like. A waiver of the certification maintenance requirement can be granted for periods when a planner is unemployed.

The most controversial provisions of the new program relate to the requirement that credits be “registered.” The details of the registration process for providers and the costs associated with registering training programs have yet to be announced. Charging for the registration of credits is required in order to support the additional staff APA/AICP will need to administer the new program.

Many have raised concerns that the fees associated with registration will discourage many providers from applying for registration of courses, especially if planners are a small proportion of their anticipated audience.

Stay tuned as the details of implementation are rolled out. The WAPA board is actively seeking ways of ensuring that our Wisconsin AICP members will have access to a diversity of high-quality professional development programs that meet the requirements of the AICP certification maintenance program.

Help Us Grow the WAPA Endowment

WAPA’s endowment has been growing, but if we are to have a sufficient fund to provide meaningful scholarships to Wisconsin planning students, we are going to need to grow faster.

Please consider a gift to the WAPA endowment for planning scholarships.

Contact Gary Peterson for more information, 608-249-2514.



2007 Award Winners

Brice Prairie Master Plan

Category: Plan Document

Awarded to: Town of Onalaska, City of Onalaska, and Schreiber/Anderson Associates, Inc.

Brice Prairie is located along the shores of Lake Onalaska and the Black River in the Town of Onalaska. Concern about limited transportation access points, contamination of drinking water, and a proposed asphalt plant resulted in the Town's Comprehensive Plan recommending the development of the Brice Prairie Master Plan. Schreiber/Anderson Associates, with the Town, assessed the future capacity of the Prairie for additional development and created a master plan for future development and preservation. Working with a panel of environmental experts and a public workshop, two concepts for future development were created. Recommendations include a Purchase of Development Rights program, land preservation, and growth in a multi-use rural hamlet. The Plan is currently being implemented.

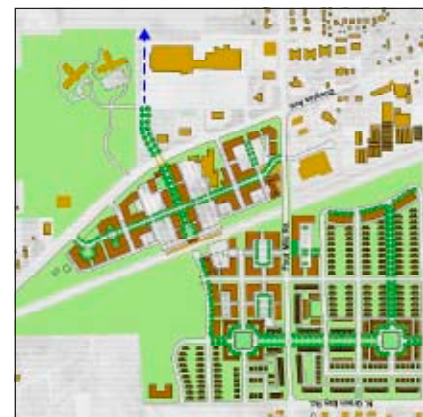


Caledonia Neighborhood Plans and Land Use Plan

Category: Plan Document

Awarded to: Planning & Design Institute, Inc., Village of Caledonia, Graef, Anhalt, Schloemer & Associates, and Cedarburg Science

Planning and Design Institute, Inc. (PDI) worked with Caledonia to create eight Neighborhood Plans and a village-wide Land Use Plan. The Neighborhood Plans emphasize critical transportation connections, land uses, densities, and open space and environmental protection. Tools are provided to help the Village preserve and enhance the existing qualities while allowing the Village to reach its fullest potential as a community. The Village utilizes the Plan in reviewing applications for conditional uses, planned unit developments, zoning changes, land divisions, stewardship plans, conservation easements, and infrastructure changes and improvements.



West Main Street Corridor Plan

Category: Planning Tool

Awarded to: Planning & Design Institute, Inc. and City of Sun Prairie

The West Main Street Corridor is a complex, 1.75 mile stretch of various uses and forms of development. The corridor is divided into four separate areas, each reflecting a unique development character and requiring a distinct planning approach. The overall vision for the corridor is to change from the current pattern of one-story buildings with large parking lots to a more compact form of development with two to four-story buildings, mixed uses, and improved parking and pedestrian circulation. A Regulating Plan, including a Block Code and Design Guidelines, was created to implement the development recommendations. Implementation has begun with the construction of a public project that improves the roadway and streetscaping.



Participating in the Development Process: A Best Practices Guide

Category: Planning Tool

Awarded to: City of Madison

The City of Madison's development review process depends on public engagement and feedback to help produce great development projects. Developers, policymakers, neighborhoods, and other interested parties and groups all have important interests in development, and each brings a unique perspective to the community dialogue about how the built environment should take form. The purpose of the Best Practices Guide is to give participants information on how they can effectively contribute to development review. The Guide is divided into several parts, including case studies and real world examples to further explain and illustrate development opportunities.



Schenk Atwood Business District Master Plan

Category: Plan Implementation

Awarded to: Schreiber/Anderson Associates, Inc., Judy Olsen Alderperson, and Krupp General Contractors

Schreiber/Anderson Associates, Inc. worked closely with the City of Madison and area business and property owners to develop recommendations for public and private improvements. Since the Plan was adopted in 2001, many projects have been implemented: over 20 new businesses (retail shops, restaurants, service businesses, and offices) have opened in or relocated to the District; over 200 new apartments and condominiums have been completed or are under construction; new streetscaping, public spaces, traffic calming, and improved traffic patterns are under way to improve pedestrian character; and the Winn/Atwood Business Association has been created to manage business activities in the district. The District is considered a great success in Madison.



“Troy Gardens, Madison, WI Affordable Housing & More.”

UWM Smart Growth Series

Lecturers Greg Rosenberg &

Marcia Caton-Campbell

Madison Area Community Land Trust
April, 2007

By RUSSELL KNETZGER

After twelve years of work, Madison Area Community Land Trust is putting the finishing touches on a 30 unit mixed-income green-built cohousing community at Troy Gardens. This 31-acre site on the northside of Madison includes an organic farm, community gardens, a restored prairie, and an interpretive trail system.

The project's conceptual and development period took so long because

of several basic hurdles: land acquisition, full neighborhood participation, and substantial financial challenges. The two speakers give major credit to the late Sol Levin, longtime director of the Madison Area Community Land Trust, (MACLT), for clearing away the toughest hurdles

Troy Gardens was formerly state-owned land adjacent to the Mendota Mental Health Institute, which had been used for many years for community gardens and open space for bird watching and dog walking. This land was declared surplus by the Department of Administration in 1995, and if sold at full market value, would have likely resulted in development of the entire site as a conventional subdivision, without the preservation of open spaces. Neighbors and gardeners banded together to save this land, and with the organizing assistance of the Northside Planning Council and the participation of other organizations, agreement was reached on a site

plan that now added a farm, prairie, and mixed-income housing to the mix. The State agreed to an appraisal that reflected the neighborhood's desired use of the site, and as a result MACLT was able to purchase all 31-acres in 2001.

Once the land was purchased, management of the land was divided between two organizations. The Friends of Troy Gardens entered into a lease with MACLT for the 26 acres of open spaces, and took on the responsibility for managing the community gardens and farm, restoring the prairie and other natural areas, as well as beginning to offer summer courses to children of elementary through high school age. MACLT began predevelopment work on the housing site, which involved numerous discussions with all the various stakeholders at Troy Gardens, in order to put together a site plan and exterior building design that made everyone happy.

Because of the unique mix of uses on the land, the discussions with the City

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of Madison regarding the PUD (planned unit development) application were lengthy and quite complex. And because of MACLT's commitment to honor the wishes of the neighborhood, any changes requested by the City needed to go back to the various stakeholders for their endorsement.

Construction on the housing began in April of 2006, with 29 of the 30 homes selling prior to completion. Final project completion will be achieved in early July 2007.

Troy Gardens also proves that energy-efficiency and low carbon output need not be limited to higher cost construction. These townhouse-style condominium homes are all Green Built Home and Energy Star certified, and include extensive green upgrade options including solar thermal and PV systems, flooring from renewable materials, tankless hot water heaters, and dual flush toilets.

Twenty of the thirty homes will be kept permanently affordable under the ground lease with MACLT, in a manner consistent with practices of community land trusts around the country.

In addition, the entire housing site was built according to universal design principles. MACLT believes that a key component of sustainability is that communities should be livable for everyone – at all points in the lifespan. Two-bedroom homes (1,150 SF) are completely barrier-free, and two-story homes (1,650 SF) include a bedroom and full bath on the first floor, consistent with the Easy Living Home standard piloted in Georgia.

All homes were built for easy expansion, with a full basement that is pre-plumbed for a full bath. This means that families can stay as they grow, and also means that persons who require attendant care can create private space for live-in attendants.

3rd International Symposium on Timeless Design Principles

Cultural Landscapes/Cultural Towns
New Harmony, Indiana . September 7-9, 2007

The 3rd International Symposium on Timeless design principles will focus on the qualities that define communities as cultural towns. The symposium will focus on the convergence of the arts as an individual activity and as an act of community. Cultural landscapes and cultural towns are genuine and authentic places that are deeply rooted in the arts and arts education which identify, create, and develop a town's unique qualities of community. They endeavor to embrace the lives of all citizens. Respecting the past, living




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the present, and visioning the future, cultural communities look forward and back simultaneously.

Please visit the [APA website](#) for more information and to register.

A Guide for Planning in Interchange Areas

[A Guide for Planning in Interchange Areas](#) was recently revised and we wanted to let the Chapter know about it.

The land use impacts of interchanges has become a hot topic for communities and WIDOT hopes that this guidance will help to address some of key issues and concerns.

Significant contributions were made to this guide by the late, Jessica Bullen. Jessica was a recent graduate of the Department of Urban and Regional Planning at the University of Wisconsin-Madison and was working on this guide as a WisDOT employee in SW Region-Madison when her life was tragically cut short in July, 2005 from injuries she received from being struck by a motor vehicle while on her bicycle.

Law Update

Consistency and the Comprehensive Plan

By BRIAN W. OHM, J.D.

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An earlier version of this article appeared in The Municipality, vol. 98, no. 7, pp. 230 - 238 (July 3003).

I. Introduction

The comprehensive planning law requires that beginning on January 1, 2010, if a local governmental unit engages in the enactment or amendment of official maps,¹ subdivision regulations,² or zoning ordinances,³ the enact-


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ment or amendment of those ordinances shall be consistent with that local unit of government's comprehensive plan.⁴ The consistency requirement is intended to achieve two objectives. One is to encourage local governments to follow their plans when they enact or amend zoning and subdivision ordinances and official maps. The second is to establish the comprehensive plan as a prerequisite for enacting or amending zoning and subdivision ordinances and official maps. By making a comprehensive plan a prerequisite for these actions, the law attempts to elevate the status of comprehensive planning from a largely advisory status to the legal basis for local programs or actions affecting land use.

The requirement also attempts to make it clear that the comprehensive plan is a document separate from implementing programs and actions (like zoning regulations). The statutory language, however, does not provide much guidance for what "consistent with" means. Some further insights into the consistency issue are therefore helpful.

II. A brief history of the consistency requirement

The consistency issue is not new. It has its origins in the requirements of the model 1926 Standard State Zoning Enabling Act that zoning regulations

"shall be made in accordance with a comprehensive plan." Most states eventually adopted zoning enabling legislation for local governments based on the 1926 Standard State Zoning Enabling Act including this requirement. The model Zoning Enabling Act did not provide any guidance on the meaning of the requirement.

Two years later the Standard City Planning Enabling Act was published and introduced the concept of a "master plan." It was unclear from the Standard City Planning Enabling Act whether the master plan was intended to be the same as the "comprehensive plan" mentioned in the Standard State Zoning Enabling Act. As a result, the relation of regulations to plans has resulted in a distinct body of litigation and commentary by scholars and practitioners on the following questions: Was a separate plan required as a prerequisite to the enactment of a zoning ordinance? If a plan is required, what is the nature of the plan and the analysis to be conducted to determine the connection between the plan and the zoning regulations?⁵ These questions are explored below.

A. The plan as a prerequisite to the enactment of land use ordinances

A leading early scholar on the consistency issue was Prof. Charles Haar at

Harvard Law School. During the 1950s, Professor Haar wrote two influential law review articles on the issue. The first article, *In Accordance with a Comprehensive Plan*,⁶ reviewed the legal history of that phrase and the reluctance of courts to invalidate zoning ordinances that were not predicated on a comprehensive plan. In the second article, *The Master Plan: An Impermanent Constitution*,⁷ Professor Haar advocated that a plan should be a prerequisite to a zoning ordinance. According to Haar, planning should relate to zoning similar to the way a constitution provides legal parameters for legislation.

According to Professor Haar, "It is difficult to see why zoning should not be required, legislatively and judicially, to justify itself by consonance with a master plan. . . . It might even be argued that zoning done before a master plan has been considered and promulgated is *per se* unreasonable, because of failure to consider as a whole the complex relationships between the various controls which a municipality may seek to exercise over its inhabitants in furtherance of the general welfare."⁸ Planning involves an analysis of the issues confronting a community and helps identify the reasons for pursuing a particular course of action. Making zoning consistent with a comprehensive plan was therefore seen as a way to provide a rational basis for local land use actions as a protection

against arbitrary and capricious decisions.

Twenty years after Professor Haar's articles, a trend was slowly beginning to emerge that continues today. Courts and legislatures were beginning to give increasing weight to comprehensive plans. Courts began to look at the comprehensive plan "as a hedge against 'special interest, irrational ad hocery.'"⁹ In a growing number of states, legislatures and courts require consistency between local regulatory action and a separately adopted, statutorily defined comprehensive plan.¹⁰ Some of the states with statutes that require consistency between regulatory actions and planning include Arizona, California, Delaware, Florida, Kentucky, Maine, Minnesota (only applies to the seven county Twin Cities metropolitan area), Nebraska, Oregon, Rhode Island, and Washington. In other states, courts grant legal status, if not controlling weight, to comprehensive plans as distinct from zoning ordinances.¹¹ Nevertheless, in what is perhaps still a majority of states; courts equate a zoning ordinance as the comprehensive plan.¹²

Historically, Wisconsin courts have followed the unitary view that the zoning ordinance is the same as a comprehensive plan. Like most states, Wisconsin's zoning enabling statutes in section 62.23 of the Wisconsin Statutes follow parts of

the 1926 Standard Zoning Enabling Act verbatim. Wisconsin's planning enabling statutes, also in section 62.23 of the Statutes, follow the 1928 Standard City Planning Enabling Act. Since the 1940s, Wisconsin statutes have included the requirement that zoning be "in accordance with a comprehensive plan."¹³ While lawsuits over the meaning of this phrase were brought in many states in the 1950s and 1960s, the meaning of the phrase was not addressed by the Wisconsin Supreme Court until 1985 in the case *Bell v. City of Elkhorn*.¹⁴ In *Bell*, the Court held that the "[zoning] ordinance itself is a comprehensive plan . . . [n]o separate comprehensive plan document need be adopted by a city as a condition precedent to enacting a zoning ordinance."¹⁵ Following the Wisconsin Supreme Court's decision in *Bell*, legal commentators noted that: "*Bell* is a holdover case from an earlier day when courts were reluctant to invalidate zoning when it was not clear what a 'comprehensive plan' was under the Standard State Zoning Enabling Act. There is a clear trend in case law and statutory law to provide for a separate comprehensive plan."¹⁶

While the Court in *Bell*, took the view that a separate comprehensive plan is not a prerequisite to having a zoning ordinance, other decisions by Wisconsin courts have recognized that a separate

comprehensive or master plan does have legal status in the court's review of local decisions. For example, in *Lake City v. City of Mequon*,¹⁷ the Supreme Court recognized that Wisconsin subdivision law gave "legal teeth" to the master plan as a basis for denying a plat even though the proposed subdivision was permitted under the existing zoning for the area. In *Peterson v. Dane County*, the Wisconsin Court of Appeals noted in passing that "the failure of the city to advance any rationale for not following its comprehensive plan is strong evidence of arbitrary action."¹⁸

In addition, the requirement for consistency between a separate plan and zoning ordinances appears elsewhere in the Wisconsin statutes. For example, Wisconsin's farmland preservation law requires that "exclusive agricultural zoning ordinances shall be consistent with county agricultural plans."¹⁹ This requirement has not generated any reported court cases. Recognizing the importance of having a separate plan as the basis for local decision making and promoting consistency between local plans and implementing ordinances are therefore not entirely new concepts for Wisconsin.

For many years state law has also required compliance with a local master

plan for several local programs. For example, under the tax increment financing laws, cities, villages, and towns need to make a finding that the plan for a proposed tax increment financing district is in "conformity" with the master plan of the city, village, or town.²⁰ The creation of an architectural conservancy district or a business improvement district requires a description of the "relationship" of the district to the local master plan.²¹ Urban redevelopment plans need to be "in accord" with the local master plan.²² Redevelopment authorities in first class cities must make the finding that the purpose for issuing bonds for public school facilities "is consistent" with the city's master plan.²³ The existence of a master plan can also help establish the basis to include non-housing facilities for certain programs funded by the Wisconsin Housing and Economic Development Authority;²⁴ establish street widths in cities and villages;²⁵ help determine the appropriate location for medical waste incinerators;²⁶ or authorize the rezoning of registered lands for nonmetallic mineral extraction operations.²⁷ Finally, counties and regional planning commissions are allowed to comment on the effect that cooperative boundary agreements between cities or villages and towns may have on the county development plan or the regional master plan.²⁸

III. What is the nature of the plan and the analysis to be conducted to determine Consistency?

What does this mean for local governments to adopt or amend certain ordinances consistent with their comprehensive plan? Does it mean that in order for a standard in a zoning ordinance to be consistent with a comprehensive plan the comprehensive plan must include a reference to that standard? How detailed must the plan be? These questions are explored below.

A. The general nature of the comprehensive plan

If consistency is defined as a literal, exact translation from plan to zoning ordinance, undesirable results might occur. The plan will become the zoning ordinance.²⁹ The genesis of the consistency issue is to clarify that a zoning ordinance is not the same as a comprehensive plan. It would be therefore be ironic to take the interpretation that the consistency requirement means that the zoning ordinance and the plan must be exactly the same.

The nature of comprehensive planning is constantly evolving.³⁰ The original object of planning was a fixed end-state master plan, with a detailed multi-colored

map indicating detailed future land uses. This approach was criticized as too rigid. Plans evolved to include more general policy statements with less specific maps.³¹

According to Professor Haar, the influential early proponent of planning/zoning consistency, the comprehensive plan should be a substantive document that states the goals of a locality and should serve as a guide for implementing legislation. It should not be excessively detailed; rather, it is a “philosophic guide to a way of life.”³²

Another major influence on thinking about the nature of comprehensive planning was T.J. Kent’s book *The Urban General Plan*. According to Kent, a comprehensive plan is:

The official statement of a municipal legislative body which sets forth its major policies concerning desirable future physical development; the published general-plan document must include a single, unified general physical design for the community, and it must attempt to clarify the relationships between physical-development policies and social and economic goals.³³

A leading text on planning practice recognizes three characteristics of a comprehensive plan—comprehensiveness, general, and long range: “‘Comprehensive,’ means that the plan encompasses all geographical parts of

the community and all functional elements which bear on physical development. ‘General’ means that the plan summarizes policies and proposal and does not indicate specific locations or detailed regulations. ‘Long range’ means that the plan looks beyond the foreground of pressing current issues to the perspective of problems and possibilities 20 to 30 years in the future.”³⁴ As recognized in a book devoted to the planning/zoning consistency issue, because of the general nature of the comprehensive plan, the plan often may not provide any guidance for the location of a fire station on a specific lot or rezoning a parcel on the boundary of a neighborhood shopping district.³⁵

Other planning scholars also note the tension inherent in the need to keep the plan more general and leave the detail to the regulatory tools: “To the extent that a plan takes on regulatory effects, it heralds the demise of planning . . . for by definition planning is not regulation.”³⁶

The general nature of comprehensive planning, however, is not without problems. A local government might devise a plan of such general nature that it would give inadequate guidance to the drafting of zoning and other ordinances. It could simply end up “permitting most anything, anywhere, under any conditions.”³⁷ Recognizing the need for

more refined guidance, since the 1950s, the plan “has shifted from simple policy statements and a single large-scale map of future land use, circulation, and community facilities, to a more complex combination of text, data, maps, and time tables.”³⁸ Modern plans have “policy sections covering environmental/social/economic/housing/infrastructure concerns, land classification maps defining spatial growth policy, land use design maps specifying locations of particular land uses, and development management programs laying out standards and procedures for guiding and paying for growth.”³⁹ As result, comprehensive plans often include a hybrid of specific and general guidance. The text of the plan is as important as any map for analyzing consistency. The text of the plan can explain how to address issues that are not easily depicted on a map, like timing and phasing provisions to avoid the premature zoning of land and non-conforming uses.

Wisconsin’s comprehensive planning statutes reflect the evolving nature of comprehensive planning and the need to strike a balance between general and more detailed coverage of information. The statutes specify that the general content of a comprehensive plan must include, a minimum nine elements. For each of the elements, the statutes provide some general guidance regarding

the questions that must be addressed to arrive at the substantive content of the element, including the need for data, policies, programs, and maps. The Implementation element also allows a community to develop an implementation schedule for actions that may need to occur sequentially after the comprehensive plan is adopted. The statutes, however, give local governments considerable discretion about the specific detail of each element. In light of the consistency requirement, local governments might want to be general in some areas and more specific in other areas. The level of detail needs to be a function of the planning process -- a process driven by the issues in the community and the region.

B. How to determine consistency?

The generally accepted analysis for determining consistency recognizes the general nature of comprehensive planning. The State of California, a pioneer in the zoning/planning consistency concept, provides the flowing guidance for analyzing consistency: "An action, program or project is consistent with the [comprehensive] plan if, considering all its aspects, it will further the objectives and policies of the [comprehensive] plan and not obstruct their attainment."⁴⁰ The model state enabling legislation prepared

by the American Planning Association as part of its "Growing Smart" project uses a similar standard and includes some additional analytical steps:

The local planning agency shall find that proposed land development regulations, a proposed amendment to exiting land development regulations, or a proposed land-use action is consistent with the local comprehensive plan when the regulations, amendment, or action:

(a) furthers, or at least does not interfere with, the goals and policies contained in the local comprehensive plan;

(b) is compatible with the proposed future land uses and densities and/or intensities contained in the local comprehensive plan; and

(c) carries out, as applicable, any specific proposals for community facilities, including transportation facilities, other specific public actions, or actions proposed by nonprofit and for-profit organizations that are contained in the local comprehensive plan.

In determining whether the regulations, amendment, or action satisfies the requirements of subparagraph (a) above, the local planning agency may take into account any relevant guidelines contained in the local comprehensive plan.⁴¹

While not interpreting the meaning of "consistency" under section 66.1001(3) of the Wisconsin Statutes, the *Lake City Corp. v. City of Mequon*

case is very instructive for interpreting what "consistent" means. The *Lake City* case involved a challenge to the City of Mequon's denial of a subdivision plat based on its inconsistency with the City's master plan under oddly worded statutory language in Wis. Stat. § 236.13(1)(c) that referenced master plans being consistent with official maps. The court's interpretation in that case is similar to the above interpretations of the zoning/planning consistency. According to the Wisconsin Supreme Court, "[t]he word 'consistent,' according to common and approved usage, means 'in agreement; compatible.' The American Heritage Dictionary 402 (3d ed. 1992). In other words, 'consistent' means 'not contradictory.'"⁴²

Under this standard, not every detail of a zoning ordinance needs to be included in the comprehensive plan to be consistent with the comprehensive plan. Again, the *Lake City* case is instructive on this issue. *Lake City* took the interpretation that "consistency" meant that any portion of a master plan that dealt with issues not covered by an official map is inconsistent with the official map. Under this interpretation, the City could deny plat approval based upon an element contained in a master plan only if such element is similarly contained in an official map. The City argued that a master plan is consistent with an official

map even if the master plan addresses issues not contained in the official map. The Court agreed with the City's interpretation.

Consistency also does not mean that the plan is static. Kent advocated an annual review and amendment of the comprehensive plan and a major reconsideration of the entire plan document every ten years.⁴³ Wisconsin's comprehensive planning law follows Kent's views. Wisconsin law requires that the implementation element "include a mechanism to measure the local governmental unit's progress toward achieving all aspects of the comprehensive plan" (such as an annual review and amendment, suggested by Kent) and that the comprehensive plan must be updated no less than once every 10 years.⁴⁴ The plan needs to be continually amended as conditions change. Likewise, the procedures for adopting a comprehensive plan expressly apply to the adoption of the original comprehensive plan and amendments to the plan.⁴⁵ This approach emphasizes the "information assembly and display" and "pulse-taking" functions of planning to provide the foundation for policy formulation by the local legislative body.⁴⁶



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III. Conclusion

Local plans in Wisconsin have been used in challenges to local land use decisions in the past with mixed results. With the advent of the consistency requirement after January 1, 2010, comprehensive plans will be a factor in the judicial review of land use disputes. Comprehensive plans should therefore play a more definitive role in the local decision making process. That is the intent of the comprehensive planning legislation. Local governments will need to use their comprehensive plan as a guide to be sure that their decisions do not conflict with the provisions of their plan. If they do conflict, the local government has the option of amending its plan.

Endnotes

¹The reference is to official mapping under Wis. Stat. § 62.23(6) which gives cities, villages, and presumably towns with village powers the authority to establish official maps by ordinance or resolution. Official maps are limited to showing the location of existing and planned future streets, highways, historic districts, parkways, parks and playgrounds, railroad rights-of-way, waterways, and transit facilities. The maps should not be confused with other maps such as the zoning map (which a community may refer to as the “official zoning map”) or future land use and other maps in the comprehensive plan. The intent of the official mapping is to notify property owners and others about the future location of these facilities and resources and prevent development that would

interfere with the proper functioning of the facilities and resources.

²The statutory reference is to city, village, town, and county subdivision regulations adopted under Wis. Stat. § 236.45, and to county plans for the future platting of lands outside the limits of incorporated cities and villages or for the future location of streets, highways, or parkways within towns under Wis. Stat. § 236.46. This statute provides limited official mapping authority to counties.

³The statutory reference is to general county zoning ordinances enacted or amended under Wis. Stat. § 59.69, general city or village zoning ordinances enacted or amended under Wis. Stat. § 62.23(7), general town zoning ordinances enacted or amended under Wis. Stat. § 60.61 (town zoning for towns in counties where there is not county zoning; adoption of village powers is not required), or Wis. Stat. § 60.62 (town zoning under village powers where the town follows Wis. Stat. § 62.23), county shoreland zoning under Wis. Stat. § 59.692, village zoning of wetlands in shoreland under Wis. Stat. § 61.351, or city zoning of wetlands in shorelands under Wis. Stat. § 62.231.

⁴Wis. Stat. § 66.1001(3). This section of the law originally stated: “[b]eginning on January 1, 2010, any program or action of a local governmental unit that affects land use shall be consistent with that local governmental unit’s comprehensive plan, including all of the following:

- (a) Municipal incorporation procedures under s. 66.012, 66.013, or 66.014.
- (b) Annexation procedures under s. 66.021, 66.024 or 66.025.
- (c) Cooperative boundary agreements entered into under 66.023.
- (d) Consolidation of territory under s. 66.02.
- (e) Detachment of territory under s. 66.022.
- (f) Municipal boundary agreements fixed by judgment under s. 66.027.
- (g) Official mapping established or amended under 62.23(6).
- (h) Local subdivision regulation under s. 236.45

or 236.46.

(i) Extraterritorial plat review within a city’s or village’s extraterritorial plat approval jurisdiction, as defined in s. 236.02(5).

(j) County zoning ordinances enacted or amended under s. 59.69.

(k) City or village zoning ordinances enacted or amended under s. 62.23(7).

(l) Town zoning ordinances enacted or amended under s. 60.61 or 60.62.

(m) An improvement of a transportation facility that is undertaken under s. 84.185.

(n) Agricultural preservation plans that are prepared or revised under subch. IV of ch. 91.

(o) Impact fee ordinances that are enacted or amended under s. 66.55.

(p) Land acquisition for recreational lands and parks under s. 23.09(20).



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(q) Zoning of shorelands or wetlands in shorelands under s. 59.692, 61.351 or 62.231.

(r) Construction site erosion control and storm water management zoning under s. 59.693, 61.354 or 62.234.

(s) Any other ordinance, plan or regulation of a local governmental unit that relates to land use.”

This section was amended in 2004 by 2003 Wis. Act 233 to clarify what actions need to be consistent with a comprehensive plan. The breadth of the consistency language in the original law was a cause for concern. The original language that “any program or action of a local governmental unit that affects land use shall be consistent with that local governmental unit’s comprehensive plan” and the ending clause that “[a]ny other ordinance, plan or regulation of a local governmental unit that relates to land use” needed to

be consistent with a comprehensive plan was overly broad and ambiguous. What is encompassed in “any program or action . . . that affects land use”? How does a local government determine if an “ordinance, plan or regulation . . . relates to land use”? The breadth of the language was particularly problematic for local governments that do not engage in any programs or actions included in the list (such as zoning, official mapping, and subdivision regulations) but do engage in activities that might fall within the ending clause. For example, a town might not have any ordinances, plans, or regulations other than a drive-way permit ordinance. Is that an ordinance that relates to land use? If it does relate to land use, does it make sense for the town to prepare a comprehensive plan (with a housing element, economic development element, intergovernmental cooperation element, utilities and community facilities element, etc.) just so the town could make driveway permit decisions consistent with a comprehensive plan?

The amended language attempts to simplify the consistency requirement by narrowing the scope of actions that need to be consistent with a comprehensive plan. The amended language is intended to ease compliance with the legal requirements of the law. The amendments should also help curtail lawsuits that would have been brought as disputing parties attempted to define what actions “affect” and “relate” to land use.

It is important to remember, however, that the fact that the list of actions that need to be consistent with a comprehensive plan was pared down does not change the definition of a comprehensive plan. Comprehensive plans still need to be comprehensive and provide guidance to local governments on a wide range of programs--economic development, nonmetallic mining, etc.

⁵Stuart Meck, ed., Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change (2002) at 8-33.

⁶Charles Haar, In Accordance with a Comprehensive Plan, 68 Harv. L. Rev. 1154 (1955).

⁷Charles Haar, The Master Plan: An Impermanent Constitution, 20 Law Contemp. Prob. 353 (1955).

⁸Haar, 68 Harv. L. Rev. at 1174.

⁹Amcon Corp. v. City of Eagan, 348 N.W.2d 66, 75 (Minn. 1984) quoting Town of New Bedford v. Village of Mt. Kisco, 33 N.Y.2d 178, 188, 351 N.Y.S.2d 129, 136, 306 N.E.2d 155, 159 (1973).

¹⁰Edward J. Sullivan & Laurence J. Kressel, Twenty Years After: Renewed Significance of the Comprehensive Plan Requirement, 9 Urb. L. Ann. 33, 41 (1975).

¹¹Id.

¹²Id.

¹³Wis. Stat. § 62.23(7)(c).

¹⁴122 Wis. 2d 558, 364 N.W.2d 144 (1985).

¹⁵122 Wis. 2d at 567, 364 N.W.2d at 148.

¹⁶Linda J. Bozung & M. Randall McRoberts, Land Use Planning and Zoning in 1987: A National Survey, 19 Urb. Law. 899, 976 (1987).

¹⁷207 Wis.2d 155, 167, 558 N.W.2d 100, 105 (1997).

¹⁸136 Wis. 2d 501, 510, 402 N.W.2d 376, 381 (1987) citing Amcon Corp. v. City of Eagan, 348 N.W.2d 66, 75 (Minn. 1984).

¹⁹Wis. Stat. § 91.73(2).

²⁰Wis. Stat. §§ 66.1105(4)(g) for cities and villages and 60.85(3)(g) (2003) for towns.

²¹Wis. Stat. §§ 66.1007(1)(f)4 and 66.1109(1)(f)4 (2003).

²²Wis. Stat. § 66.1303(3)(b) (2003).

²³Wis. Stat. § 66.1333(5r)(b)2 (2003).

²⁴Wis. Stat. § 234.01(7) (2003).

²⁵Wis. Stat. § 236.16(2) (2003).

²⁶Wis. Stat. § 285.63(10)(d)(6) (2003).

²⁷Wis. Stat. § 295.20(2)(b)1 (2003).

²⁸Wis. Stat. § 66.0307(4)(c) (2003).

²⁹Maryland Office of Planning, Achieving “Consistency” Under The Planning Act of 1992 (1994) at 6 - 7.

³⁰Edward J. Kaiser and David R. Godschalk,

Twentieth Century Land Use Planning: A Stalwart Family Tree, 61 J. Am. Plan. Assoc. 365 (1995).

³¹A. Dan Tarlock, Consistency with Adopted Land Use Plans as a Standard of Judicial Review: The Case Against, 9 Urb. L. Ann. 69, 72-73, n. 13 (1975) citing Daniel Mandelker, The Zoning Dilemma (1971) at 60-63.

³²Haar, 20 Law Contemp. Prob. at 370.

³³T.J. Kent, Jr., The Urban General Plan (1964) at 18.

³⁴Alan Black, The Comprehensive Plan, Chapter 13 in Principles and Practice of Urban Planning (William I. Goodman and Eric C. Freund, eds., 1968) at 349.

³⁵Joseph Dimento, The Consistency Doctrine and the Limits of Planning (1980) at 5, quoting Kent,



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supra note 23 at 76.

³⁶Donald Hagman and Joseph Dimento, The Consistency Requirement in California, 30 Land Use L. and Zoning Digest 5, at 7 (1977).

³⁷Maryland Office of Planning, supra note 29 at 7.

³⁸Kaiser and Godschalk, supra note 30 at 378.

³⁹Id. at 381.

⁴⁰Office of Planning and Research, Governor's Office, State of California, Sacramento, General Plan Guidelines (June 1998).

⁴¹Meck, supra note 5 at 8-37.

⁴²207 Wis.2d at 164, 558 N.W.2d at 104.

⁴³Kent, supra note 33 at 68.

⁴⁴Wis. Stat. § 66.1001(2)(i).

⁴⁵Wis. Stat. § 66.1001 (4).

⁴⁶Tarlock, supra note 31 at 99, n. 94.

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May Case Law Update

May 29, 2007

Wisconsin Supreme Court

No significant planning related cases to report

Wisconsin Court of Appeals published opinions

Tax exempt property

In *United Rentals v. City of Madison*, the Wisconsin Court of Appeals held that *United Rentals'* personal property is not exempt under Wis. Stat. § 70.111(22) because the property it rents (construction equipment and tools) is available for rental periods longer than one month. The fact that some people rent the equipment for less than one month does not allow the equipment to fall under the property tax exemption in Wisconsin law for personal property held for rental for periods of one month or less.

Followup

According to the Baraboo city attorney, the *Town of Delton v. City of Baraboo* case reported in the April update will not be appealed to the Wisconsin Supreme Court. The Court of Appeals decision is therefore the last reported decision on the inapplicability

of the extraterritorial standards in a city's subdivision regulations determining lot size based on the availability of sanitary sewer service.

Legislative Update

BY LISA MACKINNON
1000 FRIENDS OF WISCONSIN

May 18, 2007

Please remember that we will continue to post these legislative updates and other related information on the WAPA website's Law and Legislation page for members to access and continue to personally track the bills that they are interested in following more closely.

2007-2009 State Biennial Budget News

Joint Committee on Finance Executive Action on May 10th: Non Point Program Funding

On May 10th, the Joint Finance Committee adopted (13-3) the following recommendations for the non point program (Department of Natural Resources budget item): (a) provide an additional \$7,000,000 in general obligation bonding revenue for the DATCP soil and water resource management program; (b)

provide an additional \$5,000,000 bonding revenue for DNR cost-share grants for rural landowners (primarily for priority watersheds); (c) provide an additional \$5,500,000 bonding revenue for the DNR targeted runoff management (TRM) grant program; and (d) provide \$4,700,000 bonding revenue for the DNR urban non point source water pollution abatement and storm water management program and the municipal flood control and riparian restoration program.

The next Joint Committee on Finance Executive Session will be held on Tuesday, May 22, 2007, at 10:00 a.m. on the 2007-09 biennial budget. The meeting will be held in Room 412 East, State Capitol. The Executive Session will be held on the budgets of the following agencies:

Workforce Development Commerce -- Economic Development

211 Wisconsin Development Fund
-- Increased Funding

212 Wisconsin Venture Center
213 Economic Development Promotion

214 Restructure Wisconsin Development Fund

215 Gaming Economic Development and Diversification Grants and Loans--Repayments

Appropriation

Commerce -- Housing, Buildings, and Environmental Regulation

221 Repeal Requirement to Provide Education Regarding Construction Standards

222 Transfer from the Petroleum Inspection Fund to the General Fund and PECFA Awards

223 PECFA Payments for Abandoned Tank Removal

224 PECFA Alternative Reimbursement Method

225 Aviation Fuel Petroleum Inspection Fee Refund Reestimate

226 Housing Programs Reestimate

227 Fire Dues Distribution

For more information on the 2007-2009 biennial budget documents, see:

<http://www.doa.state.wi.us/debf/execbudget.asp>

For more information on the activities of the Joint Committee on Finance, see:

<http://www.legis.state.wi.us/lfb/jfc.html>

2007 - 2008 Wisconsin Legislative Session Bill Tracking

There is one significant legislative proposal regarding impact fees and subdivision regulations to report on since the April 2007 update. In addition, I have included status updates for previously

reported bills only if their status has changed since the April update. If you have been following other legislative bills addressed in previous updates, please go to the WAPA website's Law and

Legislation page for links and updates or go to the Wisconsin Legislature's website at:

<http://www.legis.state.wi.us>.

NEW LEGISLATIVE PROPOSALS

AB 341 – Making Changes to Impact Fees and Subdivision Law

AB 341 is intended to address several concerns expressed about the changes that were made last session by 2005 Wisconsin Act 203, as well as making several other changes to subdivision and impact fee law, as follows:

Restores the ability of municipalities to accept a fee in lieu of park land dedication and improvements, provided that the fee bears a rational and proportionate relationship to the need for the improvement.

Prohibits a municipality from increasing development related "pass through" fees for engineering and legal services above the amount that it pays for the service.

Extends the time period during which impact fees must be used from seven years to ten years, and allows for

a three year extension, provided that detailed, written findings are submitted to justify the extension.

Clarifies the dates by which fees collected prior to Act 203 must be used.

Changes the time at which impact fees must be paid to either a time mutually agreed to by the parties, or no later than the earliest of (a) five years after final approval of the development, (b) issuance of a building permit, or (c) issuance of an occupancy permit.

Provides that the dedication of lands in a subdivision plat for storm water facilities must be accepted when at least 80 percent of the lots in the subdivision have been sold and the storm water facilities are certified to be properly functioning.

Status: Introduced on May 16, 2007.

ASSEMBLY BILLS

None

NEW SENATE BILLS

None

UPDATES TO PREVIOUSLY REPORTED ASSEMBLY BILLS

AB 33 - Under current law, a person who owns land that has been assessed, for property tax purposes, as agricultural land and who converts the land's use so that the land may not be assessed as agricultural land must pay a penalty to the county in which the land is

located. The county pays 50 percent of the amount of the penalty to the taxation district in which the land is located. Under this bill, the county must pay the taxation district's share of the penalty to the taxation district no later than August 20 of each year.

Status: Assembly amendment 1 offered by Representative Owens on 5/2/07.

Assembly substitute amendment 1 offered by Representative Owens on 5/7/07. Public hearing held in Committee on Rural Affairs on 5/8/07.

AB 36 - Current law requires the Department of Natural Resources (DNR) to administer a program under which counties, cities, villages, towns, and non-profit organizations receive grants of up to 50 percent of the cost for certain projects relating to tree management such as development of ordinances and tree inventories. Under this bill, in addition to the grants under existing law, DNR

may award grants to any of these entities, plus Indian tribes, for the costs of saving, removing, or replacing trees damaged in a catastrophic storm event in an urban area for which the governor has declared a state of emergency. This type of grant does not require that the recipient contribute to the costs of saving, removing, or replacing the trees

Status: Public hearing held by the Committee on Environment and Natural

Resources on 5/1/07.

Executive action taken and concurrence recommended by committee (Ayes 5, Noes 0) on 5/3/07.

Enrolled in the Senate on 5/15/07.

AB 93 - This bill provides that, before the Department of Natural Resources (DNR) may award a grant under the Knowles-Nelson Stewardship program for the acquisition of development rights, it must notify the Joint Committee on Finance (JCF). If the co-chairpersons of JCF do not notify DNR within a specified date that JCF has scheduled a meeting to review the proposal, DNR may award the grant. If the co-chairpersons notify DNR within that specified date that JCF has scheduled a meeting to review the proposal, then DNR may award the grant only upon approval of JCF.

Status: Public hearing held in Committee on Property Rights on 5/2/07.

AB 170 - Current law requires a municipality, including a county, city, village, town, or school district, to publish a legal notice in a newspaper with paid circulation that is likely to give notice in the area or to the person affected. Generally, this means a newspaper that has at least two years of publication experience in the municipality and a paid circulation of at least 50 percent of its total circulation. This bill allows a municipality the additional option of posting the notice on the Internet site of the municipality.

Status: Fiscal estimate received on 4/24/07. No fiscal impact expected for local governments.

AB 181- Under current law, an architect, a landscape architect, a professional engineer, a designer of engineering systems, or a land surveyor may practice if he or she has a credential from the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors (Examining Board). The credential is renewed every other year. This bill allows the

Examining Board to establish continuing education requirements that a person must satisfy in order to renew his or her credential.

Status: A public hearing was held in the Committee on Labor and Industry on 5/2/07.

UPDATES TO PREVIOUSLY REPORTED SENATE BILLS

SB 134 - This bill was developed and is recommended by the joint legislative council's special committee on municipal annexation. The special committee was directed to review conflicts that arise under current annexation law and practice and the consequences of those conflicts, including costs to taxpayers and other affected parties, to determine if there is consensus on means to

reduce annexation disputes and encourage more boundary cooperation between towns and cities or villages.

The bill addresses 1) the determination of common municipal (city, village, and town) boundaries by agreement; and 2) the use of alternative dispute resolution (ADR) in annexation and other boundary disputes.

Status: Fiscal Estimates received 4/23/07 and 4/25/07 with indeterminate state and local fiscal effects. Public hearing held in Committee on Labor, Elections and Urban Affairs on 5/15/07.

SB 135 - This bill was developed and is recommended by the joint legislative council's special committee on municipal annexation. The special committee was directed to review conflicts that arise under current annexation law and practice and the consequences of those conflicts, including costs to taxpayers and other affected parties, to determine if there is consensus on means to reduce annexation disputes and encourage more boundary cooperation between towns and cities or villages. Expands DOA advisory review beyond populous counties.

Status: Fiscal Estimate received 4/25/07. Would increase state and local staff workloads and local costs. Public hearing held in Committee on Labor, Elections and Urban Affairs on 5/15/07.

If you see a bill of interest to you, sign up for the Wisconsin Legislative Notification Service that allows anyone to track legislative activities on proposals, committees, authors and subjects.

For other legislative links and resources, please see the list available on the WAPA website.