

## Comprehensive Planning & Smart Growth Law FAQs

### ***1. Is every community required to have its own comprehensive plan?***

The answer is a qualified yes. Under the Comprehensive Planning & Smart Growth Law enacted in 1999, a local governmental unit, by 2010, must have its own comprehensive plan in effect if it engages in any program or action that affects land use. A “local governmental unit” is defined as a county, city, village, town and regional planning commission. Sec. 66.1001(1)(b), *Wis. Stats.*

The law does not specifically require communities to have comprehensive plans. Instead, it provides that, as of 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...” Sec. 66.1001(3)(emphasis added).

This consistency requirement lists a number of specific actions and programs, such as zoning, subdivision regulation and annexation, as well as “any other ordinance, plan or regulation of a local governmental unit that related to land use,” which must be consistent with the comprehensive plan<sup>1</sup>.

The effect of this consistency requirement is that it seems clear that any local unit that engages in zoning, land division regulation and any of the other listed actions must have a comprehensive plan. It is not clear how broadly or narrowly the phrases “any program or action that affects land use” and “any other ordinance, plan or regulation...that relates to land use” would be interpreted by a court.

### ***2. What happens if a local unit takes an action that is not consistent with its plan?***

The law does not specify a consequence for the failure to act consistently with the comprehensive plan, as required by sec. 66.1001(3). However, once the consistency requirement is in effect (2010), a person aggrieved by a local governmental unit’s allegedly inconsistent land use action could take the matter to court and possibly have the action set aside.

### ***3. Must a local governmental unit have a plan commission to adopt a comprehensive plan under the law (sec.66.1001)?***

The answer is no for a county, and yes for a city, village or town. A county may engage in comprehensive planning by a planning and zoning committee or commission or another designated committee or commission. A city, village or town (with village powers) plan commission engages in comprehensive planning. A regional planning commission prepares the comprehensive plan for the region.

The above question is sometimes asked in light of the language in sec. 66.1001(4) referring to adoption of a recommended comprehensive plan or amendment by the “plan commission or other body of a local governmental unit that is authorized to prepare or amend a comprehensive plan.” This quoted language does not in itself give local bodies authority to engage in comprehensive planning. Instead, it is necessary to look at the specific statutes to see which bodies have the authority to engage in comprehensive planning.

A *comprehensive plan* is defined in sec. 66.1001(1)(a) as the *development plan* of a county, the *master plan* of a city, village or town, and the *master plan* of a regional planning commission. So the authority for a particular local governmental unit to develop a comprehensive plan is found in the statutes authorizing local governmental units to prepare development plans and master plans.

Under these specific statutes, the county *planning and zoning agency* is charged with directing preparation of the *county development plan*. Sec. 59.69(2) & (3). The county board may designate as the planning and zoning agency a *planning and zoning commission*, a *planning and zoning committee* or a *previously established committee or commission*.

The *plan commission* has the duty to prepare a *city, village or town (with village powers) master plan*. Sec. 62.23(2) & (3).<sup>2</sup> (However, in the case of a city with no plan commission, the city board of park commissioners or board of public works may develop a master plan. Sec. 27.08(3) & (4).)

The *regional planning commission* has the duty to prepare the master plan for the region. Sec. 66.0309(9).

Note that although the county, city, village and town (with village powers) planning body prepares a comprehensive plan, the planning body merely adopts a resolution recommending the plan to the unit's governing body. The governing body, not the planning body, has the authority to adopt the final comprehensive plan. The unit does not have a comprehensive plan in effect unless the governing body has adopted it by ordinance. Sec. 66.1001(4).

**4. *Are the powers of a plan commission in a city, village or town (with village powers) advisory to the governing body?***

Yes. The plan commission's role in policy development is advisory, although the governing body may, if it so desires, give the commission more powers in implementation, under certain statutory authority. The plan commission exists to assist, not replace, the governing body by developing expertise and engaging in planning. The commission's role is advisory in developing and amending the comprehensive plan and implementation measures, and in reviewing proposed actions affecting land use that are referred to it<sup>3</sup>. The plan commission makes recommendations; the governing body makes the final decisions.

However, the governing body may, under specific statutory authority, choose to give the plan commission the authority to grant special exception permits (also known as conditional use permits), under the unit's zoning ordinance. Sec. 62.23(7)(e)<sup>4</sup>. Similarly, the governing body may delegate preliminary and final authority to approve subdivision plats and other proposed land divisions to the plan commission (although final plats dedicating streets, highways and other lands must be approved by the governing body). Secs. 236.10(3) & 236.45.

**5. *May a community use an advisory committee in the planning process?***

Yes. The comprehensive planning law does not specifically address the use of advisory committees. Local units, however, commonly establish such bodies and the use of an advisory committee can be viewed as a way of involving the public. (The law requires the governing body to adopt written procedures to encourage public participation in every stage of the comprehensive planning process. Sec. 66.1001(4)(a).)

**6. *When must the plan commission of a city, village or town (with village powers) be established?***

This question arises regarding a city, village or town that has not already established a plan commission. (A county "planning and zoning agency," which prepares the comprehensive plan, may be a committee or commission. See item #3.)

The comprehensive planning law, sec. 66.1001, does not specify when the plan commission must be set up. It does, however, provide that the plan commission recommends, by resolution, adoption of the proposed comprehensive plan before referring it to the governing body for adoption by ordinance. Sec. 66.1001(4)(b) & (c). So clearly the commission must be established by this late date. However, the plan commission law itself provides that that body has the responsibility to see that the master or comprehensive plan is developed (see item #3). Sec. 62.23(2) & (3).

While it is possible to engage in some planning prior to establishing the plan commission, it should be noted that if the body charged with developing the comprehensive plan, the plan commission, becomes involved later in the planning process it may not agree with what has already been done, resulting in a loss of time, effort and expense. In addition, the plan commission must “live” with the comprehensive plan after it takes effect because of the commission’s involvement in the implementation of the plan (e.g., making recommendations on matters referred to it). For these reasons, establishing the plan commission sooner rather than later in the planning process appears to be the wise course.

**7. *May a community continue to plan under the old law? That is, may a county continue to develop or be guided by a development plan, and may a city, village or town (with village powers) continue to develop or be guided by a master plan?***

Yes, the previous planning authority remains in effect. However, as of January 1, 2010, a comprehensive plan must be in effect for any local governmental unit engaged in any program or action affecting land use (see item #1).

The authority to have a county development plan and a city, village or town (with village powers) master plan, as well as a regional planning commission master plan for the region, remains in the statutes. See the sections defining the comprehensive plan in terms of these plans and the sections authorizing plan preparation and amendment, discussed in item #3 above.

In addition, the subdivision law provides that, if a local governmental unit does not have a comprehensive plan, plat approval is conditioned on compliance with a county development plan and city, village or town master plan. Sec. 236.13(1)(c).

**8. *May a comprehensive plan be adopted on a piecemeal basis?***

Yes and no. Initially, a comprehensive plan must be adopted as a whole plan, with nine required elements, following the statutory requirements and procedures. Sec. 66.1001(4)(c). This results in having a “comprehensive plan” as that term is used in sec. 66.1001. *After* initial adoption as a whole, the comprehensive plan may be updated on a partial basis, as long as the amendment follows the statutory procedures.

However, an important point to make is that the initial development of the plan will be in stages, and the planning body (and the governing body, if it chooses) may approve the various elements prepared along the way. The statutory procedures for adopting an entire comprehensive plan, or for amending an existing comprehensive plan, are not required at this stage. Officials must realize, though, that they do not have a “comprehensive plan” under the law as they approve element by element until they have made the elements internally consistent<sup>5</sup> and then adopted the entire plan as a whole. After that, once the comprehensive plan is in place, it may be amended on a partial basis, following statutory procedures.

**9. *May a town base its land use actions on the county comprehensive plan?***

A town’s land use actions, once the consistency requirement is in effect (2010), must be consistent with the *town’s* comprehensive plan. This is because the law requires the land use-related actions and programs of a local governmental unit (as of 2010) to be “consistent with that local governmental unit’s comprehensive plan.” Sec. 66.1001(3).

However, the existence of the overlapping authority and the cross-jurisdictional nature of the effects of land use point out the desirability of consistency among the involved jurisdictions. It makes sense, for example, for town and county plans to be consistent. It also makes sense for a city or village plan to be consistent with that of a neighboring town. The law (except to the limited extent noted in item #10(a)) does not, however, require consistency between plans. The law does, though, encourage local governmental units, through their comprehensive plans' intergovernmental cooperation element, to address the issue of consistency. Sec. 66.1001(2)(g).

#### ***10. Whose comprehensive plan controls if plans conflict?***

This question comes into play when the consistency requirement under comprehensive planning takes effect (January 1, 2010). As noted above (item #9), the land-use related actions and programs of each local governmental unit must then be consistent with that unit's comprehensive plan. So each unit's own comprehensive plan "controls" the unit's actions and programs. However, the answer to the question of whose plan controls "on the ground" depends upon the specific situation and implementation authority.

The statutes cover situations where (a) the provisions of one comprehensive plan "control" another comprehensive plan; and (b) certain implementation authority "controls" an outcome of a matter when more than one unit is involved.

(a). In the first situation, a county development/comprehensive plan must include city and village master/comprehensive plans and official maps. Secs. 59.69(1) & 59.69(3)(b). Such city or village plan may include "areas outside of its boundaries which in the plan commission's judgment bear relation" to the municipality's development<sup>6</sup>. Secs. 62.23(2). In addition, a city or village official map<sup>7</sup> may cover the area subject to city or village extraterritorial plat approval<sup>8</sup>. Sec. 62.23(6)(e). The statute governing county development/comprehensive plans provides that city or village master/comprehensive plans and any official maps "control" in the affected town territory "whether or not such action occurs before the adoption of a development [comprehensive] plan." Sec. 59.69(3)(e). Conversely, county board permission is required before a city or village master/comprehensive plan may include county parks, parkways, playgrounds, bathing beaches and other county recreational facilities that are located within the city or village corporate limits. Sec. 62.23(6)(i).

The statutory language in the county planning law which provides that city and village comprehensive plans and official maps "control" in adjacent town area appears to mean that, as of 2010, *county* actions and programs affecting land use in such area must be consistent with those city and village plans and maps. Once again, this points out the need for cooperation in planning between neighboring and overlapping jurisdictions.

(b). The second situation involves implementation authority that provides which unit's actions and programs control or determine the outcome of a land use matter. (Unlike the comprehensive planning consistency requirement, which takes effect in 2010, these provisions are currently in effect<sup>9</sup>.) For example, the approval of a town subdivision plat within the extraterritorial jurisdiction of a city or village may involve the county, the city or village and the town. Sec. 236.10(1)(b). Each unit (as of 2010) would have to act consistently with its own comprehensive plan, yet the outcome is now and will be based on the statutory scheme (currently in effect). For example, the subdivision statutes provide that when requirements of different units are conflicting, the most restrictive requirements apply, although the statutes qualify this by providing that only the city, village or town in which the subdivision lies may require the installation of public improvements. Secs. 236.13(2)(a) & (4).

Another example involves zoning amendments under a general county zoning ordinance. In such situations, the town board may play a role as well as the county. The town board may disapprove a district change in the county zoning ordinance, and the majority of affected town boards may disapprove a proposed text amendment<sup>10</sup>. Sec. 59.69(5)(e). As of 2010, the county and town boards would have to act consistently with their comprehensive plans in such matters, with the outcome dependent upon each body's statutory authority.

***11. May a town under 2,500 have a 7-member plan commission?***

Yes. A town under 2,500 population has the option of having a 7-member plan commission under sec. 62.23(1), like a city or village, or a 5-member plan commission under sec. 60.62(4)<sup>11</sup>. The choice is made by town board legislative action.

***12. May the plan commission of a city, village or town (with village powers) be disbanded after the comprehensive plan has been adopted by the governing body?***

When a plan commission has been established, it has on-going duties in addition to overseeing development of the comprehensive plan. For example, the plan commission plays a role in zoning amendments, subdivision review and matters referred to it for recommendation<sup>12</sup>. Having a "planning agency" with statutory planning powers is required for local units with subdivision ordinances. Sec. 236.45. In addition, the comprehensive plan's implementation element must contain a process for updating the plan, which must be done at least once every ten years. Sec. 66.1001(2)(i). The plan commission, as with development of the original plan, is the body with responsibility to prepare the proposed amendment, which it recommends to the governing body for final adoption.

In light of this, it appears advisable to keep a plan commission in existence after adopting the comprehensive plan. Even if a local unit has little land use activity, abolishing the commission and recreating it when needed might raise practical difficulties and could raise questions if the abolition had the effect of cutting off members' terms.

***13. Reference; Note***

For a fact sheet on the Comprehensive Planning & Smart Growth Law, go to the Local Government Center (LGC) website, <http://www.uwex.edu/lgc/>, and click on "Publications." Then scroll down to Fact Sheet #15. For a link to extensive materials on the state's Office of Land Information (OLIS) webpage, from the main LGC page click on "Growth Management," and then find the OLIS link under "Internet Resources & Information /Wisconsin."

Finally, please note that these FAQs are intended for informational and educational purposes. Local officials should base their actions on the advice of their local counsel.

<sup>1</sup> Section 66.1001(3), the consistency requirement, reads in its entirety as follows: "ACTIONS, PROCEDURES THAT MUST BE CONSISTENT WITH COMPREHENSIVE PLANS. Beginning 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. 66.0201, 66.0203 or 66.0215. (b) Annexation procedures under s. 66.0217, 66.0219 or 66.0223. (c) Cooperative boundary agreements entered into under s. 66.0307. (d) Consolidation of territory under s. 66.0229. (e) Detachment of territory under s. 66.0227. (f) Municipal boundary agreements fixed by judgment under s. 66.0225. (g) Official mapping established or amended under s. 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 plan approval jurisdiction, as is 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. 66.0617. (p) Land acquisition for recreational lands and parks under s. 23.09 (20). (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.”

<sup>2</sup> Sections 60.22(3) and 61.35 bring villages and towns with village powers under sec. 62.23, the city planning law.

<sup>3</sup> Under the comprehensive planning law, the plan commission recommends a proposed plan or amendment to the governing body for final adoption. Sec. 66.1001(4). In a similar fashion, a plan commission makes recommendations on various matters to the governing body, which has final authority. These matters include: adoption of zoning ordinances and amendments, sec. 62.23(7)(d); adoption of subdivision ordinances and amendments, sec.236.45(4); and matters referred to the plan commission (e.g., location and design of public buildings, opening and closing streets, buying and selling land for parks, etc.) under the plan commission law, sec. 62.23(5), and other statutes. For more information, see the Local Government Center Fact Sheet Number 16 on The Town Plan Commission and the sample Town Plan Commission Ordinance (and notes). These materials are available on the Center’s website: see item #13 in the main text.

<sup>4</sup> The city common council may provide that the zoning board of appeals, plan commission or the council itself grants specials exception (conditional use) permits. Sec. 62.23(7)(e). This law is also applicable to villages and towns with village powers. Secs. 60.22(3) & 61.35.

<sup>5</sup> The implementation element requires the elements to be integrated and internally consistent. Sec. 66.1001(2)(i).

<sup>6</sup>The city planning law applies to villages. Sec. 61.35. The consent of the county board is required to include these areas when the county has a “regional planning department.” Sec. 62.23(2). The meaning of this term is unclear.

<sup>7</sup> The “official map” under sec. 62.23(6) is a regulatory device which lays out certain existing infrastructure, such as streets, and shows planned extensions for the purpose of preventing encroachments.

<sup>8</sup>The extraterritorial plat approval jurisdiction area is 3 miles outside of the boundary of a first, second or third class city, and 1 ½ miles outside a fourth class city or a village. Sec. 236.02(5). If the extraterritorial authority of more than one city or village overlaps, jurisdiction is divided equally between them. Sec. 66.0105.

<sup>9</sup>Although the comprehensive planning consistency requirement does not take effect until 2010, currently the farmland preservation law requires consistency in agricultural preservation planning and exclusive agricultural zoning ordinances. Subchs. IV & V, ch 91.

<sup>10</sup>In contrast, under certain special zoning statutes, towns have no or limited disapproval authority. For example, under county shoreland zoning, town boards have no disapproval authority over zoning amendments (although they may take advisory positions). Sec. 59.692(2)(a).

<sup>11</sup>A strict reading of sec. 60.62(4) would limit the 5-member option to towns under 2,500 that engage in zoning under village powers. This strict reading was not intended by the Wisconsin Towns Association. The actions of a 5-member commission of a town without town zoning under village powers would in all probability not be susceptible to challenge on this basis.

<sup>12</sup> See, e.g., 62.23(5) (matters referred to municipal plan commission) & 62.23(7)(d) (zoning amendments under the law applicable to cities, villages and towns with village powers).

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