
Wisconsin Briefs

from the Legislative Reference Bureau

Brief 15-12

May 2015

WISCONSIN'S COMPREHENSIVE PLANNING LAW

Wisconsin's comprehensive planning program, sometimes known as the "Smart Growth" initiative, was created by 1999 Wisconsin Act 9, the budget act for the 1999-2001 fiscal biennium. Wisconsin law had previously authorized local governments to create land use and economic development plans, but there was neither a mandatory structure nor required elements for the plans. For local governments that did create land use plans, there was no requirement that future government action follow or adhere to the plan. Without any incentive to plan or state assistance in creating a plan, many local governments did not exercise their authority to plan; those that did often set their plans aside once completed, and the development that occurred bore little relation to the plan that was adopted.

ELEMENTS OF A COMPREHENSIVE PLAN

The "Smart Growth" initiative, created by 1999 Wisconsin Act 9, sought to rectify this situation, first by codifying what a comprehensive plan in Wisconsin must contain. Under the initiative, a comprehensive plan must have the following nine elements, as described in Section 66.1001 (2), Wisconsin Statutes:

Issues and Opportunities: Background information on the local governmental unit and a statement of its objectives, policies, goals, and programs.

Housing: Outline of the unit's existing housing stock and its programs to promote the development of a range of housing choices.

Transportation: Plans for the future development of various modes of transportation within the unit and how this will relate to regional and state transportation plans.

Utilities and Community Facilities: Plans for the future development of a variety of utilities and community facilities, including sewers, water supply, solid waste disposal, water treatment, recycling, parks, telecommunications, power plants and transmission lines, cemeteries, health care, police and fire services, libraries, and schools.

Agricultural, Natural and Cultural Resources: Compilation of policies and programs for the conservation and effective management of natural resources, including groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, surface water, floodplains, wetlands, wildlife habitat, mineral resources, parks and recreational resources, and historical and cultural resources.

Economic Development: Compilation of goals and programs to maintain and expand the economic base of the unit, including an analysis of the local labor force and the unit's ability to retain and attract future business, plus provisions for promoting the redevelopment of environmentally contaminated sites.

Intergovernmental Cooperation: Proposals for joint planning, decision making, and conflict resolution with other jurisdictions, including school districts and neighboring local governments, and analysis of the unit's relationship to regional and state government.

Land Use: Description of amount, type, and density of existing land use along with a plan for future development and redevelopment of public and private property, including 20-year projections for land uses and utility service areas.

Implementation: Description of how the preceding eight elements will be integrated and how progress toward the plan goals will be

measured, plus a defined process for updating the plan itself at least once every 10 years.

PUBLIC PARTICIPATION

Lawmakers designed the comprehensive planning process to facilitate openness and public participation through several requirements outlined in Section 66.1001 (4), Wisconsin Statutes.

A planning unit must adopt a written procedure providing for wide distribution of planning materials to affected parties during the formulation of a comprehensive plan. The plan must be adopted by formal resolution of the planning unit, with public notice and open meetings provisions attendant to such an action. The proposed plan, along with supporting documentation, must be distributed to every affected municipality in and near the planning area before formal adoption. In addition, adoption must be preceded by a public hearing for which notice is published at least 30 days in advance. Similarly, an ordinance amending or updating a comprehensive plan must be preceded by notice to every landowner whose allowable use of property is affected by the change.

CONFORMITY REQUIREMENT

Prior to the creation of the comprehensive planning law in 1999, there was little reason for local governments to act in compliance with their own land use plans. 1999 Wisconsin Act 9, however, required all local governments to conform a wide variety of actions to the adopted plan after January 1, 2010, including boundary changes, plat approvals, zoning ordinances, or other land use regulations.

GRANT PROGRAM

1999 Wisconsin Act 9 also created a grant program for municipal and other units of government to offset the expense of formulating comprehensive plans, outlined in Section 16.965, Wisconsin Statutes, and Chapter Adm 48 of the Wisconsin Administrative Code. The Department of Administration (DOA) administers the grant program and prioritizes the awarding of grants by a formula that gives

preference to applicants whose proposals address the interests of neighboring and overlapping jurisdictions and comply with all nine planning elements. DOA calculates grant amounts on the basis of the population of the governmental unit applying for a grant. Per statute, municipalities, counties, and other entities had the right to apply jointly for grants, with a view towards multijurisdictional comprehensive plans.

According to DOA, since the creation of the grant program, over 1,500 entities have completed the comprehensive planning process, including 66 counties, 1,453 cities, villages, and towns, 6 regional planning commissions, and 4 tribal governments. This total also includes units participating in multijurisdictional plans. These plans, along with maps and lists of which areas of the state are covered by comprehensive plans, may be viewed at DOA's plan library Internet site (<http://www.doa.state.wi.us/Divisions/Intergovernmental-Relations/Comprehensive-Planning/library-of-comprehensive-plans>).

Since 2001, DOA has awarded \$21 million in planning grants under the program. Several governmental units are still working on their land use and economic development plans, most of which are self-financed. There are also a number of jurisdictions working at updating their comprehensive plans under the statutory requirement (Section 66.1001 (2) (i), Wisconsin Statutes) that comprehensive plans be updated every 10 years. The oldest of the plans adopted are already more than 10 years old.

DEVELOPMENTS SUBSEQUENT TO ENACTMENT

Since the enactment of the 1999 comprehensive planning law, no aspect has generated more controversy than the requirement that governmental actions be consistent with comprehensive plans adopted after January 1, 2010. 2003 Wisconsin Act 233 removed a number of governmental actions that must be consistent with comprehensive plans, including annexation, incorporation, consolidation, detachment of territory, cooperative boundary agreements, municipal

boundary agreements, extraterritorial plat approvals, transportation facility agreements, land acquisition for recreational areas and parks, and construction site and storm water management ordinances. The law retained requirements that platting, mapping, and zoning be consistent with comprehensive plans. 2003 Wisconsin Act 233 also created Section 66.1001 (5), Wisconsin Statutes, stating that any comprehensive plan adopted by a regional planning commission is advisory only and not binding on component local governments.

2003 Wisconsin Act 307 further modified the comprehensive planning law to make sure that owners and leaseholders of nonmetallic mining resources be notified during the creation or modification of a comprehensive plan.

As the decade progressed, and local governments around the state proceeded with the required planning process, the consistency requirement remained a controversial aspect of the program. The legislature revisited the issue during the 2009 session, and, soon after the January 1, 2010 deadline, enacted 2009 Wisconsin Act 372, which delayed the consistency requirement until January 1, 2012, with respect to governments that had applied for but not received grants under the grant program. The law also permitted DOA to grant an extension to January 1, 2012, to governmental units that had already begun the process.

2009 Wisconsin Act 372 further clarified that all towns, not just those exercising village powers, could create comprehensive plans, although towns not exercising village powers may not implement portions of a comprehensive plan requiring village powers. Act 372 also addressed another long-standing concern about "Smart Growth": that comprehensive plans would be used to regulate land use without any further government action. Act 372 clarified that the comprehensive plan, while an official statement of government policy, must be implemented by subsequent government action to be binding, such as a zoning ordinance.

RECENT DEVELOPMENTS

The "Smart Growth" initiative is ongoing and at a different stage than it was during its first 10 years. No planning grants have been awarded since 2010, and none are likely to be awarded in the near future. With a few exceptions, planning initiatives are being funded at the local level. Some of the older comprehensive plans have passed the 10-year mark and are being updated as required by law.

Zoning and other land use actions continue, even in places that have not fully implemented a comprehensive plan. Some municipalities may be operating under a pre-1999 plan, fulfilling the letter of the law relating to consistency requirements; others may have a grant application pending or be acting under a DOA extension, which, under the amended statute, would have expired on January 1, 2012, at the latest. There has been no court ruling on exactly to what extent local governments are constrained by their comprehensive plans. Plans may be less binding than they appear when municipalities may amend their plans to bring nonconforming actions into conformity.

"Smart Growth," although perhaps not so keenly discussed as in past years, continues to have its detractors. There have been attempts to repeal the law outright: 2003 Assembly Bill 435 and 2005 Assembly Bill 645. Neither passed its house of origin. The governor vetoed a similar provision in the 2005 biennial budget bill. More recently, two bills, 2011 Assembly Bill 303 and 2011 Senate Bill 225, would have permitted municipalities to repeal their comprehensive plans entirely. 2011 Assembly Bill 303 passed its house of origin but died in the senate. 2013 Senate Bill 697 permitted local governments to repeal their comprehensive plans and repealed the consistency requirement and the grant program, but it did not pass. Fifteen years after its enactment, the "Smart Growth" initiative has facilitated comprehensive planning in many Wisconsin jurisdictions, and supporters have managed to prevent a repeal of the initiative, which continues without DOA providing new planning grants.