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A Context for Reforming Wisconsin Land Use Law

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A comprehensive update of Wisconsin's planning and zoning enabling legislation is long overdue. Planning and zoning enabling legislation is the basic mechanism through which the state delegates its inherent authority to plan for and regulate the use of land to local government. For the most part, local communities in Wisconsin are operating under antiquated enabling legislation developed to address issues of the 1920s and do not have adequate tools and processes to deal with the issues of the 1990s and beyond. Wisconsin is falling far behind other states which have updated their planning and zoning legislation. While some states which have updated their enabling legislation have altered the delegation of planning and zoning authority from the state to local government, other states have updated their enabling legislation without altering the relationship between the state and local government.

The need for a comprehensive update of Wisconsin's planning and zoning enabling legislation was recognized decades ago. In 1967, for example, Professor Jacob Beuscher of the University of Wisconsin Law School coauthored a report for the Wisconsin Department of Resource Development which recommended "[a] thorough housecleaning and reorganization" of Wisconsin's land use enabling statutes which "have been permitted to go out of date and to lag behind those of other states." During the early 1970s, Governor Patrick Lucey created a Wisconsin Land Resources Committee to study the need for land use reform in Wisconsin. The final report of the Committee recognized the need to modernize the body of statutory law which enables and governs local planning, zoning, subdivision control and official mapping. The Committee found the state's land use laws to be needlessly complex and outdated in terms of basic philosophy and operational techniques. A comprehensive revision of Wisconsin's land use enabling legislation never occurred.

Another quarter century of growth and change has occurred in Wisconsin's communities under laws that long ago were

determined to be inadequate. The issues of land use today, especially development patterns, are far more complex than when many of the current land use laws were enacted. The current statutes are filled with archaic language, inconsistencies and burdensome practices which create the perception among developers and citizens in the community that the land use process is unfair. The laws contribute to the lack of integrated and coordinated land use planning in the state. The following highlights the history of the piecemeal adoption of some of Wisconsin's zoning and planning enabling legislation.

Part of Wisconsin's current land use enabling legislation for cities, codified in section 62.23 of the Wisconsin Statutes, originates from legislation passed in 1889. Over time, additional legislation has increased the authority of cities to regulate the use of land. In 1917, the state Legislature passed zoning enabling legislation for cities. This legislation was substantially modified in 1941, when the legislature passed new zoning enabling legislation for the state modeled after the Standard State Zoning Enabling Act developed by the United States Department of Commerce in the 1920s. While amendments have been made to the city zoning enabling legislation, most of the original language remains unaltered.

In 1917, the Wisconsin Legislature passed separate legislation to enable villages to adopt zoning ordinances. In 1925, the Legislature repealed the separate zoning legislation for villages and passed section 61.35 of the Wisconsin Statutes which authorized villages to use the same authority given to cities to regulate land use under section 62.23.

In 1923, Wisconsin became the first state to enable counties to zone land, subject to town approval. The zoning and planning legislation for counties is found in section 59.97 of the Wisconsin Statutes. An update of the law occurred in 1951. Several piecemeal amendments have occurred to the law in

subsequent years.

In 1947, the Legislature passed land use planning and zoning enabling legislation for towns. This legislation is codified in section 60.61 of the Wisconsin Statutes. The Legislature has given towns increasing authority over land use since that time.

In addition to these zoning and planning enabling laws, there are also several other significant land use enabling laws. Many of these laws are not well integrated in the planning and zoning legislation. For example, the state's subdivision law is codified in chapter 236 of the Wisconsin Statutes, isolated from the other land use enabling statutes. The current law was enacted by the Legislature in 1955 and has remained virtually unchanged since that time. It is distinct from the various zoning enabling statutes in that it applies uniformly to cities, villages, towns, and counties.

Recently, land use has resurfaced as a major public policy issue in Wisconsin. Various state agencies are examining how their programs impact the use of land in the state. In addition, local communities throughout the state are exploring strategies to address growth and change within their community.

Governor Tommy Thompson has created a State Interagency Land Use Council to develop a renewed vision for land use in the state and to develop a process for coordinating land use activities between state agencies. In other states, the efforts of similar land use councils have resulted in the development of state agency planning goals which must be reflected in the functional plans of state agencies. This horizontal coordination of state activities is a critical component to addressing land use issues in the state and does not alter the authority delegated by the state to local governments for planning and zoning.

The Governor also directed the State Interagency Land Use Council to create a Wisconsin Strategic Growth Task Force to recommend processes for coordinating land use activities between state agencies and local public and private interests. This Task Force will undoubtedly struggle with alternatives for the vertical integration of land use activities to insure that state agencies are cognizant of local land use activities and that local plans are coordinated with broader state interests. Often the alternatives for vertical integration involve refining the authority delegated to local government. States which are commonly recognized as having achieved some level of coordination between local land use activities and state interests include Hawaii, Vermont, Florida, Oregon, Colorado, New Jersey, Maine, Rhode Island, Georgia, Washington, and Maryland. A growing number of states are considering similar statewide planning frameworks.

What should not be lost in the eventual recommendations of the Task Force and the Council is the critical need to update the planning and zoning enabling legislation to improve the tools

available to local governments to deal with land use issues. A growing number of states have updated their basic planning and zoning enabling legislation. A few of the many states which have done so include Minnesota (1965, 1976), Arizona (1973), Delaware (1988), Kansas (1991), Utah (1991), and New York (1993). Similar efforts to update enabling legislation are currently underway in other states such as Michigan.

Updates of enabling legislation follow a variety of approaches. Some updates consolidate planning, zoning, subdivision regulation and official map enabling legislation in one chapter of the statutes to establish better linkages between land use planning and implementation techniques. Some updates merge the separate land use planning and zoning legislation for cities, villages, towns and counties into a unified law to eliminate confusion and conflict between separate enabling laws. Other updates seek to make the laws less complex so they are more accessible to the general public. An increasing number of states, including South Dakota, Nebraska and Indiana, require comprehensive planning by local communities without any required state approval of local plans.

The land use reforms of other states present a continuum of options for updating Wisconsin's planning and zoning enabling legislation. At one end of the continuum, planning is advisory. At the other end, the state plans and zones land. In between are a wide variety of mechanisms for more effectively dealing with land use and related issues, including clarifying existing authorities, mandating local planning without state coordination, mandating local planning while providing state/regional guidelines for local plans, or mandating local planning and requiring that local plans meet certain state/regional standards. Many of the options strive to ensure maximum local control over all land use issues except those of greater than local concern.

Any update of Wisconsin's enabling legislation must be tailored to the unique needs of Wisconsin. In particular, any update must acknowledge and help to coordinate the numerous laws which allow the state to be involved in local land use activities to protect the state's interest in those activities, including subdivision review, limited oversight of certain sanitary sewer service extensions, farmland preservation and various water related programs, such as the state shoreland/floodplain zoning law passed in 1966. Any update must also recognize that the reform of the legal framework within which the management of land use occurs is a constantly evolving process. By accomplishing the update of Wisconsin's planning and zoning legislation, local communities in Wisconsin will be better equipped to meet the needs of the 21st Century.

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