The Need to
Update Wisconsin's
Planning Enabling Legislation

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Extension Report 97-4

July 1997
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I. Introduction

A comprehensive update of Wisconsin's land use planning enabling laws is long overdue. These enabling laws are the mechanisms by which the state delegates its inherent police power authority, which includes the power to plan and regulate land use, to local government. For the most part, local communities in Wisconsin are operating under antiquated enabling laws 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. The laws place disproportionate emphasis on regulation by minimizing the importance of comprehensively planning for the needs of the community.

Many of the current land use controversies in the state result from these antiquated laws. As cities, villages, towns and counties throughout the state recognize the importance of planning, they are left struggling to piece together the numerous land use enabling laws in the state. Numerous issues arise where the various pieces do not fit. These issues do not necessarily relate to the more politically charged institutional issues of who plans what for whom (e.g., county zoning versus town zoning, extraterritorial zoning, etc.). Instead, many issues relate to how planning is done within the existing institutional framework. The Legislature, through its role as enabler, needs to update the state's land use enabling laws.

II. Wisconsin's Numerous Land Use Enabling Laws

Wisconsin has numerous land use enabling laws which have been adopted over time to address different issues. The piecemeal adoption of these laws has resulted in a fragmented
approach to addressing land use issues. For many people, the laws are confusing and do not present a comprehensive approach to addressing issues of growth and change. It is often difficult for people to understand the relationships between the different planning and land use regulatory tools which are available.

Among the various land use enabling laws which currently exist in Wisconsin are the following. There are three separate and distinct general zoning enabling acts in Wisconsin. One for towns without village powers (sec. 60.61, Wis. Stats.); one for counties (sec. 59.69, Wis. Stats.); and one for cities, villages and towns with village powers (sec. 62.23, Wis. Stats.). Wisconsin has a separate enabling law for local government regulation of subdivisions. In sharp contrast to the zoning enabling laws, the powers delegated to cities, villages, towns and counties to regulate the division of land (subdivisions) are almost identical (sec. 236.45, Wis. Stats.). The powers delegated to cities, villages, towns and counties to impose impact fees on new development are the same for each local unit of government involved (sec. 66.55, Wis. Stats.). This uniformity disappears, however, for the legislation enabling the official mapping of future streets and certain other public facilities. Villages and cities have express official mapping authority (sec. 62.23(6), Wis. Stats.). Towns located in counties which have not enacted a county zoning ordinance have a different official map enabling law (sec. 60.61(2)(e), Wis. Stats.). Counties have limited official mapping powers under different statutes (sec. 80.64, Wis. Stats., and sec. 236.46, Wis. Stats.).

Adding to the complexity are the different planning functions delegated to local governments—the limited planning functions for towns without village powers, the authority to adopt "master plans" by cities, villages, and towns with village powers, and the authority to
adopt "development plans" by counties. There are also numerous other laws enabling local units of government to plan for and regulate the use of land as well as separate legislation enabling regional planning (sec. 66.945, Wis. Stats.). It is often not clear to local officials how all these laws relate to one another.

III. The Basis for Many of Wisconsin's Land Use Laws—The Standard Acts

Many of Wisconsin's current laws are based on national models. For example, Wisconsin's planning and zoning enabling laws for cities, villages, and towns with village powers, are modeled after the Standard State Zoning Enabling Act and the Standard City Planning Enabling Act published by the U.S. Department of Commerce in the 1920s. The Standard Acts were promulgated when zoning was in its infant stages in this country and the ability of the public to regulate private property was still questionable under the federal and state constitutions. The motivation behind the preparation of these model acts was in part to devise a uniform national framework that could survive a challenge on constitutional grounds. These model acts laid the basic foundation for zoning and for planning in the United States. In the years following its publication, the Standard State Zoning Enabling Act was adopted by all fifty states. Wisconsin adopted the standard acts in 1941. They are currently found in section 62.23 of the Wisconsin statutes.

Following the tremendous growth which occurred after the end of World War II, many problems with the standard acts became apparent. These problems include confusion regarding the relationship of zoning regulations to planning, the use of zoning by local communities to adopt socially regressive policies such as the exclusion of low income housing, and the optional
nature of planning. Other problems include:

- There is no defined comprehensive planning requirement so most local governments engage in land use regulation on an ad hoc basis that minimizes the need for preestablishing a legitimate public purpose. A plan is often used to provide ad hoc justification for zoning decisions when consistency exists or is ignored when a plan does not exist or is inconsistent. Minimizing the effect of the plan results in far more time and attention spent on the regulatory aspects of the process than the planning process.

- The state legislature and executive branch are disconnected from the attempts of local government to deal with problems.

- The role of the courts is such that they are asked to review local land use decisions based on the limited perspective of a single site and often self-interested litigants. The traditional deference given by the courts to local government decisions is giving way to an increasing level of scrutiny by the courts to justify the legitimacy of local decisions.

- The plan commission is delegated little authority to accomplish a complex task.

- Boards of zoning appeal can become either a defender of good land use policy or the complete opposite. In many communities, the board is just another hoop for an applicant to jump through without regard to any plan or consistent rationale.

- The Standard Act seems to assume that the planning commission will appoint a planning staff. This is a fiscally unrealistic view of local government for many small communities.

- Unrelated and uncoordinated departments and units within the local unit of government are a weak link unless elected officials see planning as a method of achieving coordination of priorities, budgets, and public work.

- The Standard Act limits physical and functional jurisdiction in a manner that ignores major quality of life determinants for the future.

- There is no effective process to quickly resolve disputes between inevitably competing interests.

Wisconsin's land use enabling laws which are based on the standard acts suffer from these same problems. Other problems with both the standard acts and Wisconsin's laws, such as the exclusion of elected officials from plan making, and the lack of a requirement that a local community hold a public hearing on the adoption of a master plan, are inconsistent with Wisconsin's strong tradition of open government. In an effort to address some of these issues, as well as others, various states have modernized their planning and zoning enabling legislation to develop a unified land use enabling law. Wisconsin has not done so.

IV. Indicators of the need for change

There is no universally recognized barometer to indicate when it is appropriate to update a state's enabling legislation. Yet, a critical component of any planning process is the continuing need to evaluate the outcomes of the planning process and, when necessary, update any plans prepared as part of that process. Just as plans need updating, the basic statutory framework for planning also needs constant evaluation and updating. While evaluations of Wisconsin's land use enabling laws long ago recognized the need to update those laws, no comprehensive update has occurred. Nonetheless, the statutes governing other important institutions and procedures in Wisconsin, such as the formation of corporations and other business organizations, are continually being evaluated, updated, and improved. Wisconsin's planning and zoning enabling statutes have not received similar attention by the Legislature despite the fact that these statutes influence expectations concerning property rights and impact real estate transactions of substantial value. The current enabling 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. These laws contribute to the lack of integrated and coordinated land use planning in the state.

The need for a comprehensive update of Wisconsin's planning and zoning enabling legislation was recognized over thirty years ago. A publication of the Southeastern Wisconsin Regional Planning Commission from 1964, entitled *Zoning Guide*, noted that "[t]he zoning enabling legislation in Wisconsin is complex and not at all uniform in its grant of power nor its procedural requirements. . . . It presents unnecessary difficulty to an ordinary citizen in an attempt to understand it, to the planning agency to use it, and to the planning staff to administer it." (p. 23.) The publication also refers to a request by the Legislature in 1963 to the Wisconsin Legislative Council to study the consolidation of the planning statutes.

In 1967, Professor Jacob H. Beuscher of the University of Wisconsin Law School, who was a national leader in the field of land use law, and Orlando Delogu published a study entitled *Land Use Controls* as part of the Wisconsin Development Series by the Wisconsin Department of Resource Development. Among the recommendations of the study was "[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." The Report recognized the need for a comprehensive revision, consolidation and reorganization of Wisconsin's planning and plan implementing legislation. Specifically, the study recommended:

- "Consolidation of planning, zoning, subdivision control, and official map enabling authority in one chapter of the statutes entitled 'Land Use Planning and Implementation';"

- "Merger into one set of provisions of the planning and plan implementing powers of counties, towns, villages and cities, thus doing away with confusing and conflicting separate enabling acts for each level of local government." (p. I-4.)
- Providing a definition of a comprehensive plan.
- Clarifying the authority for flexible, discretionary zoning techniques.
- Giving the state highway commission (now the Department of Transportation) authority to preserve highway construction corridors, save highway interchanges from misdevelopment, and protect scenic amenities along the highway.
- Authorizing the elimination of non-conforming uses on the basis of fair periods of amortization.

Other recommendations in the study included, in part:

- Establishing a state interagency Land Use Council to develop state level land use controls for highway, wetland, shoreland, flood plain and open-space protection as well as regulate to preserve open space, condition approval upon satisfactory provision of open-space, accept dedications, purchase fee or less than fee interests, grant tax incentives, etc.

- Creating an occupation tax on subdividers to induce placement of development and the keeping of land open.

- Amending state building and safety codes to impose special requirements on those who choose to build in flood plains, on steep slopes or on low lands or problem soils.

- Encouraging local units of government to pass ordinances controlling setbacks and metes and bounds sales of lands along state highways.

- Strengthening the role of the regional planning commissions.

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 Wisconsin Land Resources Committee, published in February 1973, recognized, among other things, the need to modernize the existing land use control system, which the Report labeled as overly complex and confusing; reform subdivision regulation; and coordinate land use and taxation policies.
In addition, some of the recommendations of the Report included:

■ The state should set standards to control the regulation by local government of land uses which are widespread in scope and impact.

■ The standards enacted by the state in the form of statutes and administrative rules, should spell out the way in which the local land use decision should honor the regional and statewide dimensions of land uses.

■ The creation of a State Land Appeals and Review Board, similar in structure to an appellate court, to decide controversies about the way in which local land use ordinances implement state standards. The board would also hear appeals concerning large-scale land developments with multi-jurisdictional impact.

A publication by the Southeastern Wisconsin Regional Planning Commission in 1977, entitled Planning Law in Southeastern Wisconsin, recognized the need for an integrated and coordinated approach to plan implementation. According to the report:

"The problem has . . . been approached . . . on an ad hoc basis, a legislative piece at a time. Wisconsin has a separate enabling act for county zoning, one for town zoning, and still another for city and village zoning. Subdivision regulatory authority appears in quite a different part of the statutes than do any of these zoning enabling acts and without any attempt to mesh the regulatory tools. Official mapping is clearly authorized for cities and villages; while town and county authorization, in another part of the statutes is cloudy. Eminent domain powers; building and safety code authorizations; limited access controls; authorizations for special setback ordinances; power to construct and finance public improvements; authorization for park, playground, and other public facilities; scenic and conservation easement purchasing powers; authorization for soil and water conservation—all these plan implementing authorizations, and many more, appear in a random, uncoordinated way throughout the statute books." (pp. 7-8.)

The report further stated:

"The resulting mosaic that the Legislature has created is complicated and diverse. Sometimes pieces do not fit neatly one against the other. It becomes obvious very quickly that this picture of legislative delegation was not produced at one sitting. Instead, it is the product of dozens of separate legislative enactments in many sessions of the Legislature." (p. 25.)

". . . it would, in fact, be well for Wisconsin to acknowledge that with respect to its packets of zoning, subdivision control, and official map delegation there is serious need
for a rational consolidation and modernization of all three, eliminating unnecessary differentiations in power as between cities and villages, towns, and counties." (p. 48.)

Since these reports were written, little has been done to change the confusing nature of the statutes. Rather, the Legislature has only continued to add laws and make changes in a piecemeal fashion. Local governments are left struggling to use these laws to address the land use issues of today, especially development patterns, which are far more complex than when many of the current land use laws were enacted.

V. An outline of some suggested changes

The following highlights some of the specific suggestions for updating the laws related to local planning in Wisconsin:

- **Creation of a unified land use planning and plan implementation law.** A unified planning enabling law in Wisconsin would bring together the numerous land use enabling laws which currently exist in the state. The fundamental purposes behind the development of such a law would be to (1) lessen the confusion and complexity of the existing laws, particularly for citizens not trained in planning or law, and (2) present a more comprehensive approach for dealing with issues of growth and change.

The unified land use planning enabling law could help establish a common language which people can begin to use to resolve more substantive issues such as preservation of open space and the provision of affordable housing. By organizing the statutes into a unified law, local officials and others struggling to understand what these laws mean will have a better understanding of how all the parts fit together. In addition, a unified enabling law would eliminate some of the conflicting provisions which currently exist in Wisconsin's enabling laws.
such as different nonconforming use provisions depending on whether property is zoned under the town zoning enabling law, the county zoning enabling law, or the city zoning enabling law; different standards for the administration of zoning ordinances as opposed to subdivision ordinances; different procedures for the adoption of a master plan versus a county development plan, etc.

**Organization of a unified law.** Reorganization of the enabling statutes will provide those interested in the land use process with a single source outlining how the land use process works. It should be written and organized to aid people in the practical application of the law by building upon the various relationships that exist within the land use system. For example, the statutes should specify the authority of local communities to plan, the organization for planning (the planning commission), and the process for plan preparation (including public involvement which is currently not required) and for adoption of the comprehensive plan by the governing body of the local community (which is currently required for county development plans but not for master plans). The statute should then outline the procedures for plan implementation such as zoning, subdivision regulations, official maps, impact fees, land acquisition, budgeting, etc. In addition, the statute should outline procedures for efficient administration as well as enforcement of local land use regulations. Finally, the law should specify standards for judicial review, including expedited review, to insure the participation and support of the judicial branch of government in the land use planning process.

**Provide a definition of a comprehensive plan.** The legislature must provide a uniform definition of what is a comprehensive plan. Currently the statutes provide a definition of a "master plan" and a "county development plan." The zoning enabling law for cities states
that zoning must be "in accordance with a comprehensive plan." The statutes, however, provide no definition of what a "comprehensive plan" is. Certainly good planning practice dictates that a master plan or a development plan should be a comprehensive plan. As a result, many communities around the state call their master or development plans "comprehensive plans." The Southeastern Wisconsin Regional Planning Commission's Technical Report Number 6 (2nd Edition), entitled Planning Law in Southeastern Wisconsin, states: "An argument also can be made that the comprehensive plan should be the local master plan." (p. 35.) Yet, when presented with the issue, the courts in Wisconsin have not found that a "master plan" is the same as a "comprehensive plan" under the terms of Wisconsin's land use enabling laws. According to the courts, a comprehensive zoning ordinance is the same as a comprehensive plan. See, e.g., Bell v. City of Elkhorn, 122 Wis.2d 558, 364 N.W.2d 144 (1985). The various names for these plans is confusing to local officials and citizens.

The legislature needs to correct this problem by providing a statutory definition of a comprehensive plan. The definition of a comprehensive plan must include definitions of the various elements which comprise the comprehensive plan. These elements may include a land use plan, housing plan, transportation plan, community facilities plan, capital improvement plan, human services plan, economic development plan, intergovernmental cooperation element, etc.

Many communities around the state already prepare one or more of these plans. What is missing is the mechanism to make planning more comprehensive and to make the various independent plans consistent with one another and with the community's vision. Such coordinated planning often does not occur because communities prepare only one element of a comprehensive plan or prepare multiple elements over time but fail to coordinate those elements.
For example, communities will prepare plans for the development of their wastewater treatment systems before preparing any other elements of a comprehensive plan. The community then decides to prepare a master plan only to discover that it made some potentially very costly mistakes in the development of the wastewater treatment system. These types of uncoordinated functional planning efforts only add to the budgetary constraints facing most communities in Wisconsin. At a minimum, Wisconsin law should require that communities prepare a comprehensive plan in stages, over time as resources permit, and insure that all the elements are coordinated. Communities will need to properly budget for planning if it is going to succeed and they should be encouraged to do so.

**Require planning.** At a minimum, the law should require the preparation of at least the land use element of a comprehensive plan prior to the enactment of implementing devices such as zoning ordinances, subdivision ordinances, etc. While current statutes state that it shall be the function and duty of the local plan commission to make and adopt a master plan for the physical development of the community, a significant number of communities in Wisconsin, both large and small, do not have a master plan. Given these realities, the requirement for planning, particularly comprehensive planning, needs to be stronger. However, the law needs to provide sufficient flexibility to vary the contents of the comprehensive plan based on the characteristics of the local government.

**Local consistency.** The law should also insure implementation of the plan by requiring that local land use controls (e.g., zoning ordinances, subdivision regulations, site plan regulations, official maps, building codes) as well as fiscal devices (e.g., tax increment financing) are enacted consistent with the comprehensive plan. Too often substantial sums of time and
money are spent preparing plans which are never followed. Strengthening the consistency between the plan and implementing devices will insure that public dollars spent on planning are not wasted. The lack of consistency is in part the result of the enabling laws.

The county zoning enabling law is silent regarding the relationship between county development plans and county zoning. As a result, the efforts by these counties to ultimately implement their plans are undermined.

While the zoning enabling law for cities, villages, and towns with village powers states that zoning shall be "in accordance with a comprehensive plan," the Wisconsin courts have never interpreted this to mean that when a community zones land it must be consistent with a comprehensive plan. *Bell v. City of Elkhorn*, 122 Wis.2d 558, 364 N.W.2d 144 (1985). In the recent case entitled *Lake City Corp. v. City of Mequon*, 207 Wis.2d 156, 558 N.W.2d 100 (1997), the Wisconsin Supreme Court strengthened the role of master plans in the review of subdivisions. The case is discussed in Appendix A. The case raises many unanswered questions about the confused and complex nature of the enabling laws.

□ **Provide express enabling legislation for moratoria.** The planning process often raises the need for communities to suspend the development approval process for a brief period of time while studies are completed and plans are being prepared or revised. In light of the land use issues confronting communities throughout the state, an increasing number of cities, villages and towns are imposing temporary moratoria relying on the language of section 62.23(7)(da) of the Wisconsin Statutes. That section of the statutes, entitled "Interim zoning," states:

The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim zoning ordinance to preserve existing uses while the comprehensive zoning plan is being
prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment.

This section is illustrative of the problems with the current zoning enabling law. While the section may have made sense decades ago when communities were preparing zoning ordinances for the first time, the statute now raises several questions. Does the statute apply to communities which already have adopted a zoning ordinance but are in the process of revising that ordinance? Does it apply to communities who are in the process of creating or revising a master plan? These questions were posed but not answered by the Wisconsin Court of Appeals in *Lake City Corp. v. City of Mequon*, 199 Wis.2d 353, 544 N.W.2d 600 (Ct. App. 1996). In that case, the Court of Appeals questioned in dicta whether municipalities have the authority to enact a moratorium during the time that it takes to prepare a master plan. While the Wisconsin Supreme Court reversed the Court of Appeals decision in the Mequon case on other grounds, it did not provide any guidance on the propriety of moratoria in light of the issues raised by the Court of Appeals.

Another recent Wisconsin Supreme Court case, *Lake Bluff Housing Partners v. City of South Milwaukee*, 197 Wis.2d 157, 540 N.W.2d 189 (1995), is an example of the potential abuses of a moratorium where a community targets one particular property owner. While the main issues presented in these cases do not deal with moratoria, the cases are nonetheless instructive as to the confusion which exists regarding moratoria and the need for moratoria enabling legislation. Moratoria enabling legislation would decrease the risk of arbitrary action by local governments in imposing moratoria.

More and more counties are also imposing temporary moratoria, yet there is no express statutory authorization to do so. While there are strong arguments that counties have implied
authority to impose moratoria, express statutory authorization would provide better guidance.

The above items provide an incomplete list of the many issues that need to be addressed in an update and consolidation of Wisconsin's land use enabling laws. Additional items which should be considered include updating the land use enabling laws as they affect development agreements; providing express statutory enabling authority for unified development ordinances; enabling authority to permit interim uses; and providing alternative dispute resolution mechanisms, such as a development of regional impact process, to address potential conflicts in comprehensive plans of different communities. By providing improved local enabling laws, the state will provide a stronger planning framework for addressing many of the land use issues in the state.

VI. Examples of recent developments in planning enabling legislation from other states

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 Delaware (1988), Kansas (1991), and Utah (1991). 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. Included as Appendix B is a copy of the American Planning Association's policy implementation principles entitled "The Appropriate State Role, as Actor and Enabler, in Planning for and Managing Change." This document enumerates some of the numerous options for the reform of planning enabling laws.

The planning programs in the state of Oregon have received a great deal of attention in both the academic and popular press. The planning programs in the states such as Florida and New Jersey have also received some attention. While it is interesting to compare Wisconsin's planning programs to these states, it is perhaps more enlightening to compare Wisconsin's planning and zoning legislation to other states which are not normally considered pioneers in the area of planning and the management of change.

Included as Appendix C are excerpts from Maine's Comprehensive Planning and Land Use Act, enacted in 1988. Included as Appendix D are excerpts from the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, one of the most recent comprehensive revisions of a state's planning and zoning enabling legislation.
These are just two examples of a growing number of states that have updated their planning and zoning enabling legislation to reduce the complexity and confusion of the land use planning process and develop a process that better reflects modern times. These examples are included to enable the reader to better understand what updated enabling legislation could look like. The examples are not included as a specific recommendation of any of the substantive or procedural requirements contained in the examples.

Nonetheless, the updates reflect several important achievements which could benefit Wisconsin. The updates:

- provide a consolidated set of laws governing planning, and land use regulatory techniques such as zoning and subdivision regulation;
- unify the planning enabling legislation for different units of government;
- provide a definition of a "comprehensive plan;"
- emphasize the importance of comprehensive planning as a prerequisite for the regulation of land use;
- require some level of consistency between the comprehensive plan and land use regulations.

Wisconsin's planning enabling laws provide for none of the above. It is difficult for communities in Wisconsin to deal with issues of change without making changes in Wisconsin's planning enabling laws that address some of the issues addressed by other states in their laws.

The thrust of the updated laws in Maine, South Carolina, as well as many other states, emphasize two very important points. First, if a local community is going to regulate the use of land, it must prepare a plan before adopting the implementing tools. Second, the legal status of the comprehensive plan is elevated to insure that local land use decisions are consistent with the
comprehensive plan. Wisconsin's enabling legislation provides for neither of these two points.

In the case of South Carolina, for example, local governments cannot adopt zoning ordinances until they have adopted at least the land use element of the comprehensive plan. In the case of Maine, a land use ordinance which is not consistent with a comprehensive plan is void. These provisions provide certainty to property owners, developers, and citizens. If an area is planned for commercial development, it can be developed for commercial development. The provisions also help communities insure that development is consistent with community goals and that local government will be able to adequately serve the needs of the development.

Other notable features of these and other updates include requirements for broad citizen participation, an emphasis on local control, and the articulation of state goals. In addition, South Carolina joined a growing number of states with development agreement legislation. Legislation for development agreements is often strongly supported by the development community as well as local communities because of the certainty it can provide to the development process.

VII. Conclusion

Updating Wisconsin's zoning and planning enabling legislation is an important first step in resolving many of the land use issues confronting the state. 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, such as 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.

An update of the legislation will provide a better framework for local decision making. The confusing nature of the enabling laws often becomes a distraction to addressing the real issues of growth and change. By removing this distraction, communities can begin to develop a comprehensive framework within which to focus on other issues such as tax equity, urban/rural relationships, affordable housing. 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.
February, 1997
Volume 3, Number 2

The Wisconsin Supreme Court Strengthens Role of Master Plans
by Brian W. Ohm, J.D.

A recent decision by the Wisconsin Supreme Court held that a city plan commission1 may rely on an element contained solely in a local master plan to reject a proposed plat. The decision, entitled Lake City Corp. v. City of Mequon, was filed by the Supreme Court on January 31, 1997. The decision strengthens the use of the local master plan as the basis for reviewing proposed subdivisions as explained below.

THE FACTS BEHIND THE CASE

In 1977, Lake City purchased 59 acres of land in Mequon, Wisconsin, a northern suburb of Milwaukee. In 1984, at the request of Lake City, Mequon rezoned the property to allow multi-family, single family residential, and commercial development. In 1992, Mequon began a comprehensive revision of its master plan and zoning ordinances to address issues of growth in the community. During Mequon's planning process, Lake City applied to Mequon's plan commission for preliminary plat approval.2 The plat conformed with the existing zoning ordinances. Before acting on Lake City's application, the plan commission amended its master plan to limit the area including Lake City's property to residential uses with a minimum lot size of 1.5 acres per dwelling unit. The plan commission then voted to deny Lake City's request for preliminary plat approval because the proposed plat conflicted with the newly amended master plan.

Lake City then sued Mequon. The circuit court held that the plan commission had the authority to deny Lake City's application for preliminary plat approval based upon the amendment to the master plan. The Wisconsin Court of Appeals reversed the decision of the circuit court because it determined that state law did not allow a plan commission to use its master plan as the basis for denying a preliminary plat. The Wisconsin Supreme Court reversed the decision of the Court of Appeals.

THE SUPREME COURT'S DECISION

The Supreme Court's decision that a plan commission may rely on an element contained solely in a master plan to reject plat approval seems fairly straightforward. Nonetheless, the magnitude of the Court's decision needs to be explored in light of the obstacles the Court had to overcome given the confused nature of Wisconsin's land use law.

The Wisconsin Statutes provide several factors upon which local communities may condition their approval of subdivision plats. The issue presented to the Supreme Court was whether the confusing language of one of those factors, found in section 236.13(1)(c) of the Wisconsin Statutes, authorizes a city plan commission to deny plat approval based solely upon an element contained in a master plan. When section 236.13(1)(c) of the Wisconsin Statutes was originally adopted in 1955, it read: "Approval of the preliminary or final plat shall be conditioned upon compliance with . . . any local master plan or official map." In 1979, the Wisconsin Legislature amended that section to read: "Approval of the preliminary or final plat shall be conditioned upon compliance with . . . [a]ny local master plan which is consistent with any . . . official map adopted under s. 62.23." The job for the Supreme Court was to determine what the 1979 amended language meant.

1While the case involved a city, the decision should also apply to villages and towns exercising village powers consistent with Wis. Stat. § 62.23.

2Pursuant to Wis. Stat. § 236.10(3), the Mequon city council delegated its authority to review plats for subdivisions to the plan commission. In its opinion, the Supreme Court stated that its decision applies equally to communities whose governing body has retained plat approval authority.
Lake City argued for an interpretation of the 1979 amendments whereby a city plan commission may deny plat approval based upon an element contained in a master plan only if that element is also contained in an official map. Mequon asserted that the use of the term "consistent" in the statutes meant that issues addressed in both a master plan and an official map must not be "otherwise inconsistent." Mequon further argued that a master plan is consistent with an official map even if the master plan addressed issues not contained in the official map.

The Supreme Court accepted Mequon's interpretation of the statute. In so doing, the Court confirmed the pre-1979 interpretation of the statute which put "legal teeth" into master plans. The Supreme Court found nothing in the drafting file for the 1979 amendment that indicated the legislature intended to reduce the power of plan commissions to rely on master plans when reviewing plats.

Besides clarifying the 1979 amendment, the Supreme Court also addressed the issue of whether zoning ordinances must always prevail over master plans when the two are inconsistent. The Court held that if there is a conflict between a zoning ordinance and a master plan, the plan commission can rely on the master plan and not the zoning ordinance to deny the plat. The Supreme Court cautioned, however, that a plan commission does not have extra-legislative power to override the city council on issues such as lot size which can be regulated through subdivision review and through zoning ordinances. It is unclear from the Court's opinion if this caution is necessary in situations where, based on local practice, the city council also adopts the master plan.

The Supreme Court further limited its decision by holding that master plans prevail over zoning ordinances only in the case of proposed subdivisions geographically located within the borders of a city or village. The zoning/master plan conflict portion of the Court's opinion does not apply to plats located within the extraterritorial jurisdiction of a city or village. Since the facts of the case did not involve the extraterritorial jurisdiction of the city of Mequon, the Court avoided the complexities of trying to balance the competing interests and laws which can exist in the extraterritorial areas—the subdivision enabling law versus the extraterritorial zoning enabling act versus county zoning authority, etc. The Court left the resolution of issues related to the extraterritorial area to further court cases or to the legislature.

**IMPACT OF THE DECISION**

Based on the Lake City decision, a municipality can rely on an element contained solely in a master plan as the basis for rejecting a plat, subject to the following:

a. If a municipality has an official map, the plan commission can deny the approval of a plat that conflicts with the local master plan, so long as any common elements contained in both the master plan and official map are consistent (not contradictory);

b. A master plan is consistent with an official map (if there is one) even if the master plan contains additional elements that the official map does not;

c. If there is a conflict between a zoning ordinance and a master plan, the master plan prevails, except in the extraterritorial plat review jurisdiction of a municipality and a plan commission cannot override the zoning decisions of the governing body for the municipality.

Despite this guidance, there are still many unanswered questions. For example, while the Court's decision focuses on using the master plan as a basis to reject plats, the objective of the subdivision review process should be to ensure compliance with the plans and regulations of a community. Query whether the outcome of the Mequon case would have been different if the developer was proposing to build a mixed use multifamily/commercial subdivision consistent with a master plan which called for that type of development but the property was zoned for low density residential development. Would the master plan still prevail over the zoning ordinance? When reviewing subdivisions, will a community follow its master plan or will the community follow its zoning ordinances?

Public planning needs to provide property owners with greater certainty than recognized by the Supreme Court. To provide greater certainty, communities need to follow a timely process for bringing land use regulatory tools (zoning, subdivision, official maps, etc.) into conformance with the master plan. Customary planning practice would also encourage the use of a moratorium to limit development during the planning process to avoid some of the problems encountered in this case. Hopefully the case will encourage rational decision making by local communities rather than arbitrary actions.

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The Appropriate State Role, as Actor and Enabler, in Planning for and Managing Change

Adopted by the Chapter Delegate Assembly
Ratified by the Board of Directors
Nashville, Tennessee - October 1993

FINDINGS

The traditional relationship of the state to comprehensive planning has been an authorizing one. All states long ago adopted enabling acts that authorized planning and implementation by local governments. Those enabling acts remain in effect in most states today. That traditional role of the state in planning is no longer adequate. The purpose of these Policy Implementation Principles is to provide to state APA chapters a range of alternative policy approaches to planning issues, ranging from the "MINIMUM" acceptable as a basis for responsible planning and decision-making, including items that might "ADDITIONALLY" be considered in some states and also giving approaches that might "OPTIMALLY" be taken in those states most intent on improving public decision-making. These options are based on the following findings:

- **Benefits of planning.** A coordinated approach to planning that integrates local, county, regional and state comprehensive and functional planning will advance a broad range of public interests, including but not limited to: improving the quality of land use decisions; saving money on infrastructure and maintenance through more efficient use of resources; guiding future growth and investment so as to achieve a sustainable economy; conserving renewable resources; protecting sensitive natural resources; providing the opportunity for affordable housing; achieving a balanced tax base, rate of growth, revenue stream and manageable public service costs; and generally helping to create a desirable quality of life for present and future generations;

- **Standard enabling acts permit planning, but do not require it.** When the enabling acts were drafted in the 1920s, planning was a novel concept and thus permitting it was all that the drafters undertook. However, with some seventy years of experience with local planning now, most knowledgeable public officials and professionals recognize that some form of planning is essential to provide the basis for decisions in the public sector. Planning should be required -- not merely permitted as a discretionary activity -- as the basis for all relevant public policy decisions;

- **Local governments vary in their interest in and ability to prepare and implement plans.** Local governments have traditionally carried the principal responsibility for local land use and infrastructure decisions. There are good historical and political reasons to keep major planning and regulatory decisions at the local level. However, local governments are beset by a wide variety of opportunities and pressures that affect their ability to engage in planning. Some communities have more resources and capacity to plan; some experience conditions (such as extensive growth pressure) that seem to force them to plan; and some have political constituencies more supportive of planning. Thus, state governments must find ways to increase the ability of local governments to plan, not just to adopt mandates;

City and county conditions and issues may differ within a state. Local governments understandably resist
centralized state approaches that appear insensitive or unresponsive to local situations. Yet it is in the interest of the common good (state interest) that appropriate planning should occur in all parts of the state, by all units of government. Thus, at the same time as state legislation establishes state and regional responsibilities, it must also provide opportunities for local governments to make reasonable adjustments consistent with local needs, resources and responsibilities;

Local governments are free to ignore plans. For complex historical reasons, the enabling acts in effect in most states do not even clearly require that local governments follow their own plans. Although a handful of states now require "consistency" between some local decisions and adopted plans, and local governments in some other states generally follow their plans, local governments in most states are free to disregard their own plans when it is politically expedient to do so;

Local governments have multiple plans. Most local governments have many types of plans. Such local governments may follow their adopted comprehensive plans when making "land use" decisions, such as rezonings, but ignore them when adopting capital budgets and making other important local decisions;

Multiple entities make planning decisions. Many critical decisions that affect the growth patterns of a community are made by utility districts, school boards and other governmental and quasi-governmental entities that under most state laws give little regard to local plans. The nation's metropolitan areas include large numbers of local governments, each with its own plans and implementation programs. Thus, even where each local government has a plan that makes sense, it is most unlikely that the accumulation of those local plans will amount to a logical metropolitan area or regional plan without a requirement for such metropolitan or regional planning;

Some critical issues are regional. Both within metropolitan areas and outside them, some critical issues are larger than the boundaries of a particular local government. Wetlands, floodplains, habitat areas, hurricane and avalanche hazard areas and prime farm and forest lands are all areas of great concern to many planners and public officials; these areas rarely fall within the boundary of a single local government. Further, the state often has a greater stake in preserving or protecting such lands from inappropriate activity than a particular local government may have. Facilities such as airports, waste disposal sites, and major highways are matters of interest to multiple governmental entities within a region. Further, living, shopping, working and recreation patterns of citizens are often regional rather than local;

States play important roles in setting growth and redevelopment patterns. The states themselves make a variety of decisions that affect growth and redevelopment patterns, ranging from funding new highways to building new community colleges and prisons. Some states also operate under a variety of adopted plans and/or policies that affect planning, all of which may or may not be consistent. These decisions are rarely coordinated with the plans of the communities that they affect;

Federal programs have growth impacts. Many federal programs have impacts on local growth patterns and planning. Those generally are not coordinated with local planning efforts, although the Intermodal Surface Transportation Efficiency Act (1991) has established an important principle by requiring the consideration of local plans in planning transportation projects; the Clean Air Act Amendments, coastal zone management programs, and, increasingly, the basic laws of agencies managing federal lands also recognize the importance of coordinating federal efforts with local plans. Note that these Policy Implementation Principles do not address the relationship of federal plans and projects to local and state plans because that issue is addressed by another Policy Implementation Principles, entitled: "The Federal Role and Complementary State Actions in State and Local Planning;"

A comprehensive approach is needed. Past approaches to improving planning and managing change have generally been piecemeal efforts to supplement state planning laws. Such piecemeal approaches often create as many problems as they solve. It is time for a comprehensive and coordinated approach to planning and growth management. In addition to developing these recommendations, APA has developed the "Growing Smart" research agenda related to this issue; this PIP is consistent with the direction of that research; and
Needs and opportunities vary by state. Because of wide variations in the political and practical circumstances of the states, it is not possible to make a uniform set of recommendations for planning in all fifty states. All states, however, face the same general issues. These Policy Implementation Principles contain eight major principles, each addressing a key planning issue confronting states today. Each of those principles recommends a range of options (and resulting sub-motions) that states can use in addressing that particular issue.

PRINCIPLES

1. State planning. APA chapters should support legislation that requires coordinated planning by states. The state planning process, like any local one, should be a participatory one that attempts to build a grassroots consensus among the full diversity of the citizens of the state as well as the cities, counties and other political entities within the state that will ultimately be affected by the plans.

   a. At a MINIMUM, such state plans should guide: capital investment by the state in infrastructure, institutions, and other state facilities; allocation and expenditure of funds for transportation and other infrastructure and physical facilities; management of social and economic development programs; implementation of environmental programs; protection of critical areas; provision of the opportunity for affordable housing; management of state-owned lands; resolution of planning issues affecting more than one local government; state land acquisition and disposition policies; and the location of regionally essential but locally unwanted facilities* such as landfills. Further, there should be no state preemption of local plans or regulations without prior state planning. More specifically, state laws should require state agencies to conform to local plans meeting the minimum requirements of state law except where that state agency has an approved plan. This plan must reflect a state interest that exceeds the interests protected by the local plan and into which the affected regional and local governments were given a meaningful opportunity to participate prior to its adoption.

   b. ADDITIONALLY, state planning goals and policies may provide guidance for the preparation and implementation of those aspects of local or regional plans that address matters of statewide concern, and for the preparation and implementation of state plans and operating policies.

   c. OPTIMALLY, states will require coordination of state, regional, and local plans and policies. Different states will choose to accomplish that coordination in different ways, some through simple efforts at facilitating cooperation among neighboring planning agencies, others through some sort of statewide planning process.

* See APA’s Policy Guide on Locally Unwanted Land Uses

2. State law and mandatory local planning. The APA Chapters should support legislation that requires comprehensive planning by local governments and consistency between adopted plans and local decisions.

   a. At a MINIMUM, state laws should require local governments to adopt local plans and to follow those plans in zoning, subdivision, annexation and capital improvement decisions. State laws should require that local plans be geographically and substantively comprehensive, but the laws should allow local governments great latitude in defining the format and content of such plans. Small municipalities should be permitted to rely on applicable county or regional plans.

   b. ADDITIONALLY, in some states, the state should establish overarching statewide goals and require that local plans themselves be consistent with those statewide goals. To the extent that such statewide goals mandate local expenditures on purely non-local concerns, the state should fully fund those expenditures.

   c. OPTIMALLY, state laws should require the implementation of local comprehensive plans through the
timely adoption of appropriate zoning ordinances, other land use regulations and capital improvements programs.

3. The relationship between state and local plans. The APA Chapters should support legislation that makes local plans effective.

a. At a MINIMUM, state laws should require the consideration of adopted local plans in all decisions of all state and local agencies (including quasi-governmental agencies such as public utilities) involving the acquisition or disposition of public lands or the construction of public buildings or facilities.

b. OPTIMALLY, where the state provides mechanisms for the initial and continuing review of local and regional planning and implementation efforts in accordance with established criteria, state laws should require that all state and local agencies (including quasi-governmental agencies such as public utilities) adhere to conforming local and regional plans in all decisions involving the acquisition or disposition of lands or the construction of buildings or facilities. This mandate should, of course, be accompanied by the provision of the following principle for participation of such entities in the planning process.

4. Participation in planning efforts.* The APA Chapters should support legislation that provides for participation in the local, regional and state planning processes by all those who will be affected by those plans, including other entities of government and all economic and social stakeholders.

a. At a MINIMUM, any entity or person who will be bound by the plan, including other state and local agencies, should have legal authority to participate in the planning process equal to that of a local resident or landowner and shall have similar authority to participate in the process of adopting implementing mechanisms, including ordinances, budgets and other programs.

b. OPTIMALLY, all municipalities within the same county and all other local governments (including counties) located within a reasonable distance of the boundaries of the planning area should have similar authority to participate in the planning process and the review and adoption of plans.

* In accordance with APA's Agenda for America's Communities, this principle is intended to include the real participation of citizens who have heretofore been excluded from the planning process.

5. Regional planning. The APA Chapters should support legislation that creates effective regional planning mechanisms in all areas recognized as logical planning regions, such as Metropolitan Statistical Areas or watersheds.

a. At a MINIMUM, all government entities within an identified region should have legal authority to participate in pertinent aspects of the planning processes of each other local government within the region and the review and adoption of plans and implementing mechanisms.

b. ADDITIONALLY, the state should develop a program of adequately funded cooperative regional planning with required cross-acceptance of local plans among interdependent or interacting local governments within a region.

c. OPTIMALLY, the state should require that all local governments within a recognized region form a regional planning agency with the responsibility to develop regional planning strategies through coordination of local planning efforts and a region-wide perspective. The state should further establish a mechanism through which the regional agency can make the regional plan effective by requiring that provisions of local plans and actions by state agencies with greater-than-local impacts be brought into conformance with regional planning strategies.

d. ADDITIONALLY, state law should require that regional planning strategies be consistent with
6. **Implementation of local comprehensive plans.** The APA Chapters should support legislation that encourages and facilitates the implementation of local comprehensive plans.

a. **At a MINIMUM,** state enabling acts should offer local governments a more complete range of tools to implement plans. Tools authorized by a state may include, but are not limited to, impact fees, tax increment financing, tax incentives, growth management programs, adequate public facilities standards, transferable development rights and more flexible forms of zoning. If for any reason state law does not require planning, the availability of these additional tools should be conditioned on the adoption of local and regional plans, as applicable, meeting specified criteria.

b. **At a MINIMUM,** state law should give local governments and regional planning agencies increased flexibility in the mechanics of planning and implementation, unlike the traditional, often-prescriptive approach. That flexibility should cover such matters as: the number and types of members on local commissions and boards; the assignment of duties to those boards; the delegation of decision-making duties; and the methods for implementing and enforcing land use controls. While increasing the flexibility, the new laws should preserve basic concepts of citizen participation, diversity of representation, and due process for all stakeholders. The new laws should encourage streamlining and add requirements for reasonably prompt and certain decisions, and the laws should offer realistic and accessible relief in cases of unreasonable delay or incomplete or unclear decisions.

c. **OPTIMALLY,** state law should require that local governments take all actions reasonably necessary to implement adopted local and regional plans, including updating zoning maps; adopting other appropriate land use controls; in addition to zoning; adopting and following consistent capital budgets, including those for schools; guiding the operations of "enterprise" operations, such as water and sewer departments; and management of social and economic development programs.

7. **State support for local and regional planning and plan implementation.** The APA Chapters should support legislation that provides incentives and assistance to encourage regional, county and local planning efforts.

a. **At a MINIMUM,** states need to provide information and technical assistance to local governments and regional entities to assist in planning. Some communities need to be educated regarding the merits of planning itself. Others may lack the expertise to meet state goals. Just as states make population and economic analysis available to city and county governments, they can provide environmental and geographic information as well. Other valuable informational resources include workshops for elected officials (as well as planning commissioners and staff), technical assistance and extension programs, and studies of effective planning techniques.

b. **ADDITIONALLY,** states should provide incentives to encourage local planning. Options offered should be tailored to meet the special needs of governmental units within the state. A wide range of options exists, including, but not limited to, planning grants; infrastructure grants; limiting the use of certain regulations, like zoning, to communities with adequate plans; allowing a portion of bond monies (or other capital project expenditures) to be used for planning; increasing revenue sharing funds to communities with planning programs that meet certain state criteria; allowing counties to plan and zone in areas where municipal governments do not have jurisdiction or have not exercised it.

c. **OPTIMALLY,** in addition to information, technical assistance and training services, states should provide direct financial assistance to local governments and regional entities to meet state planning requirements on issues of greater than local concern and for small (or other) communities that want to plan but that lack the resources to do so. State assistance could be delivered through regions, counties, universities, planning organizations, or other organizations. Perhaps established as grants-in-aid, such resources should help to overcome some of the barriers to planning in such localities. Further, if
necessary, state law can authorize state fees, local fees, or taxing authority to support planning and implementation measures by providing a reliable and continuous stream of revenues for planning.

8. Review and Revision of Plans. APA chapters should support legislation that ensures that adopted plans and implementation mechanisms remain current, relevant and consistent with related plans, policies and laws.

   a. **At a MINIMUM,** each state should establish a mechanism through which state, local, (and regional) plans and implementation measures will be reviewed at appropriate intervals.

   b. **ADDITIONALLY,** state law should permit the amendment of plans through a process similar to that of the adoption process, including appropriate participation by other governmental entities and by all stakeholders.

   c. **OPTIMALLY,** a state should establish a system for monitoring and evaluating land use and the effects of land use planning.

   d. **OPTIMALLY,** state law should establish systems to evaluate the performance of governments in implementing plans.

Note: The implementation of actions called for in this Policy Guide at the state level is at the initiative of each APA chapter.
CHAPTER 187
PLANNING AND LAND USE REGULATION

§ 4301. Definitions
As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affordable housing. "Affordable housing" has the same meaning as set out in section 5002, subsection 2.

2. Coastal areas. "Coastal areas" means all municipalities and unorganized townships contiguous to tidal waters and all coastal islands. The inland boundary of the coastal area is the inland line of any coastal town line.

3. Comprehensive plan. "Comprehensive plan" means a document or interrelated documents containing the elements established under section 4326, subsections 1 to 4, including the strategies for an implementation program which are consistent with the goals and guidelines established under subchapter II.

4. Conditional zoning. "Conditional zoning" means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned.

5. Contract zoning. "Contract zoning" means the process by which the property owner, in consideration of the rezoning of that person's property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

6. Development. "Development" means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.
6-A. Impact fee. “Impact fee” means a charge or assessment imposed by a municipality against a new development to fund or recoup the cost of new, expanded or replacement infrastructure facilities necessitated by and attributable to the new development.

7. Implementation program. “Implementation program” means that component of a local growth management program which includes the policies and ordinances or other land use regulations which carry out the purposes and general policy statements and strategies of the comprehensive plan in a manner consistent with the goals and guidelines of subchapter II.

8. Land use ordinance. “Land use ordinance” means an ordinance or regulation of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land and the standards for those uses.

9. Local growth management program. “Local growth management program” means a document containing the components described in section 4326, including the implementation program, which is consistent with the goals and guidelines established by subchapter II and which regulates land use beyond that required by Title 33, chapter 3, subchapter I, article 2-B.

10. Local planning committee. “Local planning committee” means the committee established by the municipal officers of a municipality or combination of municipalities which has the general responsibility established under sections 4324 and 4326.

11. Moratorium. “Moratorium” means a land use ordinance or other regulation approved by a municipal legislative body which temporarily defers development by withholding any authorization or approval necessary for development.

12. Municipal reviewing authority. “Municipal reviewing authority” means the municipal planning board, agency or office, or if none, the municipal officers.


14. Regional council. “Regional council” means a regional planning commission or a council of governments established under chapter 119, subchapter I.


15-A. Zoning ordinance. “Zoning ordinance” means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.

§ 4302. Nuisances

Any property or use existing in violation of a municipal land use ordinance or regulation is a nuisance.


SUBCHAPTER II
GROWTH MANAGEMENT PROGRAM


§ 4312. Statement of findings, purpose and goals


2. Legislative purpose. The Legislature declares that it is the purpose of this Act to:
   A. Establish, in each municipality of the State, local comprehensive planning and land use management;
   B. Encourage municipalities to identify the tools and resources to effectively plan for and manage future development within their jurisdictions with a maximum of local initiative and flexibility;

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C. Encourage local land use ordinances, tools and policies based on local comprehensive plans;

D. Incorporate regional considerations into local planning and decision making so as to ensure consideration of regional needs and the regional impact of development;


F. Provide for continued direct state regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital state interests; and

G. Encourage the widest possible involvement by the citizens of each municipality in all aspects of the planning and implementation process, in order to ensure that the plans developed by municipalities have had the benefit of citizen input.


3. State goals. The Legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The Legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the State, it is in the best interests of the State to achieve the following goals:

A. To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl;

B. To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;

C. To promote an economic climate which increases job opportunities and overall economic well-being;

D. To encourage and promote affordable, decent housing opportunities for all Maine citizens;

E. To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas;

F. To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas;

G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public;

H. To safeguard the State's agricultural and forest resources from development which threatens those resources;

I. To preserve the State's historic and archeological resources; and

J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters.

§ 4314. Transition; savings clause

1. Comprehensive plan. A municipal comprehensive plan or land use regulation or ordinance adopted or amended by a municipality under former Title 30, chapter 239, subchapter V\(^1\) or VI\(^2\) remains in effect until amended or repealed in accordance with this subchapter.

2. Zoning ordinances. Notwithstanding section 4352, subsection 2, any portion of a zoning ordinance that regulates land use beyond that required by Title 38, chapter 3, subchapter I, article 2-\(B\)^\(^3\) and that is not consistent with a comprehensive plan adopted under this subchapter is void 24 months after adoption of the plan or by July 1, 1994, whichever date is later.

3. Land use ordinances. Any land use ordinance not consistent with a comprehensive plan adopted according to this subchapter is void:

A. After January 1, 1998, in any municipality that received a planning assistance grant and an implementation assistance grant under former section 4344, subsection 4 prior to December 23, 1991; and

B. After January 1, 2003, in all other municipalities.
§ 4321. Local comprehensive planning

There is established a program of local growth management to accomplish the goals of this subchapter.

§ 4323. Local authority for growth management

Through the exercise of its home rule authority, subject to the express limitations and requirements of this subchapter, every municipality may:

1. Planning. Plan for its future development and growth;

2. Growth management program. Adopt and amend local growth management programs, including comprehensive plans and implementation programs, consistent with this subchapter; and

3. Other. Do all other things necessary to carry out the purposes of this subchapter.

§ 4324. Local responsibility for growth management

This section governs a municipality's responsibility for the preparation or amendment of its local growth management program. Where procedures for the adoption of comprehensive plans and ordinances are governed by other provisions of this Title or municipal charter or ordinance, the municipality may modify the procedural requirements of this section as long as a broad range of opportunity for public comment and review is preserved.

1. Growth management program. Each municipality may prepare a local growth management program in accordance with this section or may amend its existing comprehensive plan and existing land use ordinances to comply with this subchapter.

2. Local planning committee. If a municipality chooses to prepare a local growth management program, the municipal officers of a municipality or combination of municipalities shall designate and establish a local planning committee.

   A. The municipal officers may designate any existing planning board or district established under subchapter IV,1 or a former similar provision, as the local planning committee. Planning boards established under former Title 30, section 4952, subsection 1, continue to be governed by those provisions until they are superseded by municipal charter or ordinance.

   B. The local planning committee may develop and maintain a comprehensive plan and may develop an initial proposed zoning ordinance or an initial revision of an existing zoning ordinance. In performing these duties, the local planning committee shall:

      (1) Hold public hearings and use other methods to solicit and strongly encourage citizen input; and

      (2) Prepare the comprehensive plan and proposed zoning ordinance and make recommendations to the municipal reviewing authority and municipal legislative body regarding the adoption and implementation of the program or amended program.

3. Citizen participation. In order to encourage citizen participation in the development of a local growth management program, municipalities may adopt local growth management programs only after soliciting and considering a broad range of public review and comment. The intent of this subsection is to provide for the broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination and consideration of and response to public comments.

4. Meetings to be public. The local planning committee shall conduct all of its meetings in open, public session. Prior public notice must be given for all meetings of the local planning committee pursuant to Title 1, section 406. Prior to April 1, 1990, if the local planning committee provided notice in compliance with Title 1, section 406, that notice was sufficient for all legal purposes.
§ 426. Local growth management program

A local growth management program shall include at least a comprehensive plan, as described in subsections 1 to 4, and an implementation program as described in subsection 5.

1. Inventory and analysis. A comprehensive plan shall include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance the municipality considers important. The inventory must be based on information provided by the State, regional councils and other relevant local sources. The analysis must include 10-year projections of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.

The inventory and analysis section must include, but is not limited to:

A. Economic and demographic data describing the municipality and the region in which it is located;
B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, where applicable, their vulnerability to degradation;
C. Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under Title 5, section 3316, and unique natural areas;
D. Marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas;
E. Commercial forestry and agricultural land;
F. Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality;
G. Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities;
H. Residential housing stock, including affordable housing;
I. Historical and archeological resources including, at the discretion of the municipality, stone walls, stone impoundments and timber bridges of historical significance;
J. Land use information describing current and projected development patterns; and
K. An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services.

2. Policy development. A comprehensive plan must include a policy development section that relates the findings contained in the inventory and analysis section to the state goals.

The policies must:

A. Promote the state goals under this subchapter;
B. Address any conflicts between state goals under this subchapter;
C. Address any conflicts between regional and local issues; and
D. Address the State's coastal policies.

3. Implementation strategy. A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality shall employ the following guidelines consistent with the goals of this subchapter:

A. Identify and designate at least 2 basic types of geographic areas:
(1) Growth areas, which are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality shall:
   (a) Establish standards for these developments;
   (b) Establish timely permitting procedures:
(c) Ensure that needed public services are available within the growth area; and

(d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion; and

(2) Rural areas, which are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality shall adopt land use policies and ordinances to discourage incompatible development.

These policies and ordinances may include, without limitation: density limits; cluster or special zoning; acquisition of land or development rights; or performance standards.

A municipality is not required to identify growth areas for residential growth if it demonstrates that it is not possible to accommodate future residential growth in these areas because of severe physical limitations, including, without limitation, the lack of adequate water supply and sewage disposal services, very shallow soils or limitations imposed by protected natural resources; or it demonstrates that the municipality has experienced minimal or no residential development over the past decade and this condition is expected to continue over the 10-year planning period. A municipality exercising the discretion afforded by this paragraph shall review the basis for its demonstration during the periodic revisions undertaken pursuant to section 4327.

B. Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development;

C. Protect, maintain and, when warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter I, article 4-A and ensure that the water quality will be protected from long-term and cumulative increases in phosphorus from development in great pond watersheds;

D. Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality may adopt ordinances more stringent than applicable state law;

E. Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal municipality shall discourage new development that is incompatible with uses related to the marine resources industry;

F. Ensure the protection of agricultural and forest resources. Each municipality shall discourage new development that is incompatible with uses related to the agricultural and forest industry;

G. Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of section 4358 pertaining to individual mobile home and mobile home park siting and design requirements. The municipality shall seek to achieve a level of 10% of new residential development, based on a 5-year historical average of residential development in the municipality, meeting the definition of affordable housing. Municipalities are encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to, cluster zoning, reducing minimum lot and frontage sizes, increasing densities and use of municipally owned land;

H. Ensure that the value of historical and archeological resources is recognized and that protection is afforded to those resources that merit it;

I. Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking; and encourage the creation of greenbelts, public parks, trails and conservation easements. Each municipality shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting that protection; and

J. Develop management goals for great ponds pertaining to the type of shoreline character, intensity of surface water use, protection of resources of state significance and type of public access appropriate for the intensity of use of great ponds within a municipality's jurisdiction.

4. Regional coordination program. A regional coordination program must be developed with other municipalities to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others. This program must provide for consistency with the comprehensive plans of other municipalities for these resources and facilities.

5. Implementation program. An implementation program must be adopted that is consistent with the strategies in subsection 3.
CHAPTER 29 [New]

South Carolina Local Government Comprehensive Planning Enabling Act of 1994

ARTICLE 1. CREATION OF LOCAL PLANNING COMMISSION 6-29-310

ARTICLE 3. LOCAL PLANNING—THE COMPREHENSIVE PLANNING PROCESS 6-29-510

ARTICLE 5. LOCAL PLANNING—ZONING 6-29-710

ARTICLE 7. LOCAL PLANNING—LAND DEVELOPMENT REGULATION 6-29-1110

Editor's Note—
1994 Act No. 355, § 2, provides as follows:
"SECTION 2. Chapter 27 of Title 4, Chapter 23 of Title 5, Section 6-7-310 through Section 6-7-1110, and Act 129 of 1963 are repealed, effective five years from the date of approval of this act by the Governor [approved May 3, 1994]. At the end of five years, all local planning programs must be in conformity with the provisions of this act. During the intervening five years, this act is cumulative and may be implemented at any time."

ARTICLE 1 [New]

CREATION OF LOCAL PLANNING COMMISSION

6-29-310. "Local planning commission" defined.
6-29-320. Bodies authorized to create local planning commissions.
6-29-330. Areas of jurisdiction; agreement for county planning commission to act as municipal planning commission.
6-29-340. Functions, powers, and duties of local planning commissions.
6-29-350. Membership; terms of office; compensation; qualifications.
6-29-360. Organization of commission; meetings; procedural rules; records; purchases.
6-29-370. Referral of matters to commission; reports.
6-29-380. Funding of commissions; expenditures; contracts.

§ 6-29-510. Planning process; elements; comprehensive plan.
(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual reevaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

1. inventory of existing conditions;
2. a statement of needs and goals; and
3. implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:
(1) a population element which considers historic trends and projections, household numbers and sizes, educational levels, and income characteristics;

(2) an economic development element which considers labor force and labor force characteristics, employment by place of work and residence, and analysis of the economic base;

(3) a natural resources element which considers coastal resources, slope characteristics, prime agricultural and forest land, plant and animal habitats, parks and recreation areas, scenic views and sites, wetlands, and soil types. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(4) a cultural resources element which considers historic buildings and structures, commercial districts, residential districts, unique, natural, or scenic resources, archaeological, and other cultural resources. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(5) a community facilities element which considers transportation network; water supply, treatment, and distribution; sewage system and wastewater treatment; solid waste collection and disposal, fire protection, emergency medical services, and general government facilities; education facilities; and libraries and other cultural facilities;

(6) a housing element which considers location, types, age and condition of housing, owner and renter occupancy, and affordability of housing; and

(7) a land use element which considers existing and future land use by categories, including residential, commercial, industrial, agricultural, forestry, mining, public and quasi-public, recreation, parks, open space, and vacant or undeveloped.

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.
ARTICLE 5 [New]
LOCAL PLANNING—ZONING

Sec.
6–29–720. Zoning districts; matters regulated; uniformity; zoning techniques.
6–29–750. Special development district parking facility plan; dedication.
6–29–760. Procedure for enactment or amendment of zoning regulation or map; notice and rights of landowners; time limit on challenges.
6–29–770. Governmental entities subject to zoning ordinances; exceptions.
6–29–780. Board of zoning appeals; membership; terms of office; vacancies; compensation.
6–29–790. Board of zoning appeals; officers; rules; meetings; notice; records.
6–29–800. Powers of board of appeals; variances; special exceptions; stay; hearing; decisions and orders.
6–29–850. Appeal to Supreme Court.
6–29–870. Board of architectural review; membership; officers; rules; meetings; records.
5–29–940. Appeal to Supreme Court.
6–29–950. Enforcement of zoning ordinances; remedies for violations.

§ 6–29–720. Zoning districts; matters regulated; uniformity; zoning techniques.

(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts of such number, shape, and size as the governing authority determines to be best suited to carry out the purposes of this chapter. Within each district the governing body may regulate:

(1) the use of buildings, structures, and land;

(2) the size, location, height, bulk, orientation, number of stories, erection, construction, reconstruction, alteration, demolition, or removal in whole or in part of buildings and other structures, including signage;

(3) the density of development, use, or occupancy of buildings, structures, or land;

(4) the areas and dimensions of land, water, and air space to be occupied by buildings and structures, and the size of yards, courts, and other open spaces;

(5) the amount of off-street parking and loading that must be provided, and restrictions or requirements related to the entry or use of motor vehicles on the land;

(6) other aspects of the site plan including, but not limited to, tree preservation, landscaping, buffers, lighting, and curb cuts; and...
(7) other aspects of the development and use of land or structures necessary to accomplish the purposes set forth throughout this chapter.

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter. Except as provided in this chapter, all of these regulations must be uniform for each class or kind of building, structure, or use throughout each district, but the regulations in one district may differ from those in other districts.

(C) The zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it:

(1) "cluster development" or the grouping of residential, commercial, or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel;

(2) "floating zone" or a zone which is described in the text of a zoning ordinance but is unmapped. A property owner may petition for the zone to be applied to a particular parcel meeting the minimum zoning district area requirements of the zoning ordinance through legislative action;

(3) "performance zoning" or zoning which specifies a minimum requirement or maximum limit on the effects of a land use rather than, or in addition to, specifying the use itself, simultaneously assuring compatibility with surrounding development and increasing a developer's flexibility;

(4) "planned development district" or a development project comprised of housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed use development;

(5) "overlay zone" or a zone which imposes a set of requirements or relaxes a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries; and

(6) "conditional uses" or zoning ordinance provisions that impose conditions, restrictions, or limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning district. The conditions, restrictions, or limitations must be set forth in the text of the zoning ordinance.

ARTICLE 7 [New]
LOCAL PLANNING—LAND DEVELOPMENT REGULATION

6-29-1110. Definitions.
6-29-1120. Legislative intent; purposes.
6-29-1130. Regulations.
6-29-1140. Development plan to comply with regulations; submission of unapproved plan for recording is a misdemeanor.
6-29-1150. Submission of plan or plat to planning commission; record; appeal.
6-29-1160. Recording unapproved land development plan or plat; penalty; remedies.
6-29-1170. Approval of plan or plat not acceptance of dedication of land.
6-29-1180. Surety bond for completion of site improvements.
6-29-1190. Transfer of title to follow approval and recording of development plan; violation is a misdemeanor.
6-29-1200. Approval of street names required; violation is a misdemeanor; changing street name.

CHAPTER 31 [New]
South Carolina Local Government Development Agreement Act

6-31-10. Short title; legislative findings and intent; authorization for development agreements; provisions are supplemental to those extant.
6-31-20. Definitions.
6-31-30. Local governments authorized to enter into development agreements; approval of county or municipal governing body required.
6-31-40. Developed property must contain certain number of acres of highland; permissible durations of agreements for differing amounts of highland content.
6-31-50. Public hearings; notice and publication.
6-31-60. What development agreement must provide; what it may provide; major modification requires public notice and hearing.
6-31-70. Agreement and development must be consistent with local government comprehensive plan and land development regulations.
6-31-80. Law in effect at time of agreement governs development; exceptions.
6-31-90. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.
6-31-100. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.
6-31-110. Validity and duration of agreement entered into prior to incorporation or annexation of affected area; subsequent modification or suspension by municipality.
6-31-120. Developer to record agreement within fourteen days; burdens and benefits inure to successors in interest.
6-31-130. Agreement to be modified or suspended to comply with later-enacted state or federal laws or regulations.
6-31-140. Rights, duties, and privileges of gas and electricity suppliers, and of municipalities with respect to providing same, not affected; no extraterritorial powers.
6-31-145. Applicability to local government of constitutional and statutory procedures for approval of debt.
6-31-150. Invalidity of all or part of § 6-31-140 invalidates chapter.
6-31-160. Agreement may not contravene or supersede building, housing, electrical, plumbing, or gas code; compliance with such code if subsequently enacted.