

Questions and Answers About Wisconsin's Comprehensive Planning Law

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This document is a question-and-answer between state Representative Mary Hubler (75th District) and Wisconsin Legislative Counsel Senior Staff Attorney Mark C. Patronsky. The purpose of the Legislative Counsel is to clarify matters of state law for elected officials. Copies of the originals of Rep. Hubler's questions and Mr. Patronsky's responses are attached.

Legislative Counsel's Introduction

"The comprehensive planning statute is relatively simple. This statute applies to local governmental units, which are defined as a county, city, village, town, or regional planning commission. The statute requires a comprehensive plan to contain nine 'elements' that are briefly described. ...

"The statute does *not require* a local government unit to adopt a comprehensive plan. If a local government unit adopts a comprehensive plan, it must contain the statutory elements and, beginning on January 1, 2010, 'any program or action of a local governmental unit that affects land use' must be consistent with the comprehensive plan. ... The risk of not having a comprehensive plan, or having an inadequate plan, is that land use decisions of a local government may be subject to legal challenge. ...

"If a local government unit does not make land use decisions, there is no consistency requirement and no need to adopt a comprehensive plan. ...

"This statute is simple and self-contained and has no substantive consequences other than the mandate for consistency. ..."

Rep. Hubler's Question (Re: Plan Approval): Whether prior or subsequent to local plan adoption, does the state of Wisconsin, any of its agencies (including DNR), or any Regional Plan Commission have the power to approve or reject local comprehensive plans prepared under the 1999 Comprehensive Planning Law, or to request a fee for such approval?

Leg. Counsel's Answer: No.

Q (Re: Approval for Grant-Funded Plans): In the case of a Comprehensive Planning Grant-funded local comprehensive plan prepared under the 1999 Comprehensive Planning Law, does the state of Wisconsin, any of its agencies (including DNR), or any Regional Plan Commission have the power to do anything beyond withholding remaining Comprehensive Planning Grant-funding, if the plan does not meet the terms negotiated with OLIS in the Comprehensive Planning Grant contract?

A: No.

Q (Re: Plan Enforcement): Subsequent to plan adoption, will the state of Wisconsin, any of its agencies (including DNR), or any Regional Plan Commission have the power to police local comprehensive plans prepared under the 1999 Comprehensive Planning Law?

A: No.

Q (Re: Prescribing Outcomes): Does the 1999 Comprehensive Planning Law prescribe any specific qualitative outcomes for any of the nine elements of local comprehensive plans, or does it simply describe what factors should be addressed in a comprehensive plan?

A: Although the comprehensive planning statute does not prescribe any specific results for the contents of the local plan, it should be noted that the comprehensive plan will have consequences due to the consistency requirement.

Q (Re: Prescribing Growth Rates): Does the 1999 Comprehensive Planning Law mandate “no growth” or “slow growth” planning, or does it simply require “planned growth” at the natural local rate of local population expansion?

A: The comprehensive planning statute does not contain any specific mandate regarding the accommodation of growth. The question mentions “no growth,” “slow growth,” or “planned growth.” None of these issues is addressed in the comprehensive planning statute. At most, the statute requires a consideration of potential need, such as the housing element, which requires a compilation of governmental actions to provide “an adequate housing supply that meets existing and forecasted housing demand.”

Q (Re: Condemnation and Amortization): Does the 1999 Comprehensive Planning Law give any level of government any new powers to condemn private property or to “amortize” non-conforming uses?

A: No.

Q (Re: Public Participation): Under the 1999 Comprehensive Planning Law, may a comprehensive plan be prepared without opportunities for public participation?

A: No.

Q (Re: Planning and Zoning): Do comprehensive plans prepared under the 1999 Comprehensive Planning Law have the power to determine local zoning (whether such zoning is enacted by the municipality that has created the plan, or by some other municipality)?

A: No.

Q (Re: Intergovernmental Relations): Does the 1999 Comprehensive Planning Law in any way change the pre-existing legal relationships between towns and counties, towns and villages/cities, counties and villages/cities, or any of the above with regional planning commissions, the state, or any state agency (including DNR)? (I.e., does the 1999

Comprehensive Planning Law give any new powers to counties, regional planning commissions, the state, or the DNR?)

A: No.

Q (Re: Private Property): Does the 1999 Comprehensive Planning Law change private property law or practice at the local, state, or federal level?

A: No.

Q (Re: Consultants): Does the 1999 Comprehensive Planning Law require that a local government hire an outside consulting firm to draft its comprehensive plan?

A: No.

Q (Re: Other Land-Use Regulations): In the absence of the 1999 Comprehensive Planning Law, would all of the following regulations and procedures remain in force: municipal incorporation, annexation, boundary agreements, consolidation or detachment of territory, official mapping, subdivision ordinances, extraterritorial plat review, local zoning, transportation improvements, agricultural preservation, impact fees, park and open space acquisition, shoreland and wetland zoning, erosion control and stormwater management, as well as DNR Lakes Classification, and WisDOT subdivision review?

A: Repeal of the comprehensive planning statute would not directly affect any of the other statutes listed in this question. However, the consistency requirement should be noted, and local governmental decisions with respect to many of these statutes, commencing January 1, 2010, must be consistent with the comprehensive plan.