



# **Zoning: From Comprehensive Plans to Changes in the Legal Landscape**

Brian Ohm

Professor & Sate Specialist

Dept. of Urban & Regional Planning

UW-Madison/Extension

An aerial photograph of a suburban area with green lawns, trees, and winding roads, serving as a background for the title.

# Overview

- Comprehensive Planning Updates:
  - Updating your plans
  - Using your plan: Consistency
- Changing Legal Landscape:
  - Recent court decisions
  - Recent legislation
  - Market trends

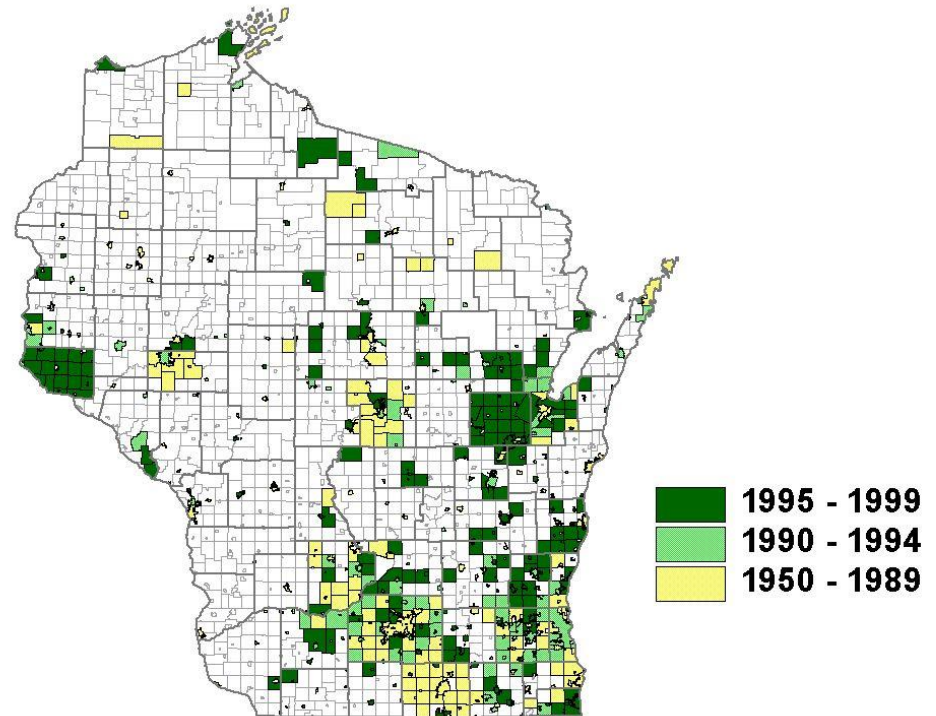


# Comprehensive Planning:

## **UPDATING AND USING YOUR PLAN**

# Pre- 1999 problems with Wisconsin's planning enabling statutes

- Less than 1/3 of local governments had a “land use plan”
- No definition of comprehensive plan
- Isolation of planning from the political mainstream
- Citizen participation not required
- Piecemeal adoption of plans





# Wis. 1999 Comprehensive Planning Law in a Nutshell

- Definition of a comprehensive plan
- Citizen participation
- Adoption by elected governing body
- Consistency



An aerial map of a region, likely in Wisconsin, showing a network of roads, green spaces, and some water bodies. The map is faded and serves as a background for the title.

# **The Origins of the Law: Consensus Building**

1000 Friends of Wisconsin

Wisconsin Realtors Association

Wisconsin Builders Association

Wisconsin Chapter of the American Planning Association

Wisconsin Council of Regional Planning Organizations

Wisconsin Towns Association

Wisconsin Counties Association

League of Wisconsin Municipalities

Wisconsin Alliance of Cities

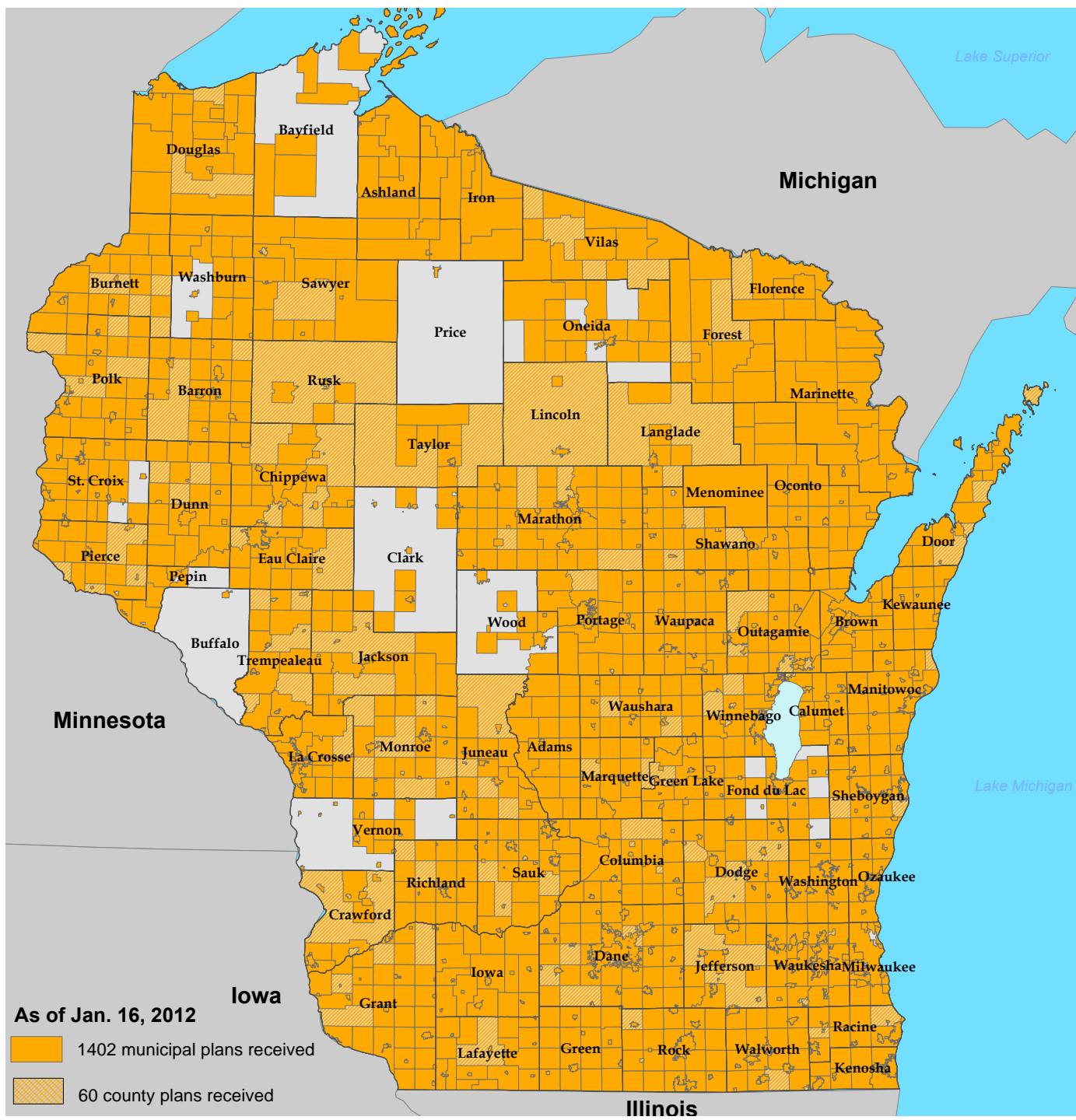
State Office of Land Information Services

# Comprehensive plan definition

- Issues and opportunities
- Housing
- Transportation
- Utilities and community facilities
- Agricultural, natural and cultural resources
- Economic development
- Intergovernmental cooperation
- Land use
- Implementation





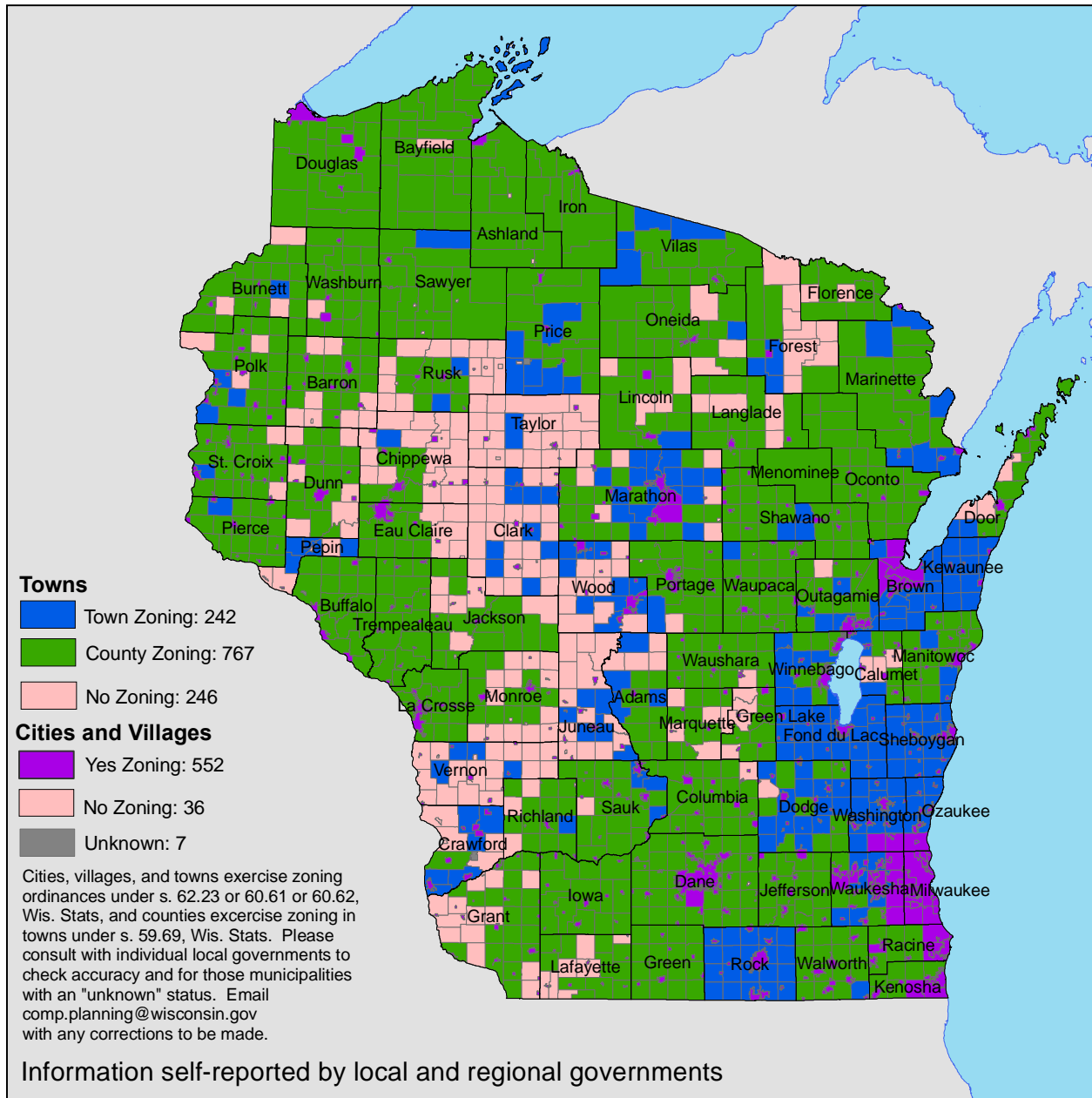




# **Remember**

**Don't confuse comprehensive planning with zoning!**


# Zoning in Cities, Villages, and Towns





# **Using your comprehensive plan: What the law says**

- “. . . if a local governmental unit enacts or amends any of the following ordinances, the ordinances shall be consistent with that local governmental unit’s comprehensive plan:
  - Official mapping ordinances enacted or amended under s. 62.23(6)
  - Local subdivision ordinances enacted or amended under s. 236.45 or 236.46.
  - County zoning ordinances enacted or amended under s. 59.69.
  - City or village zoning ordinances enacted or amended under s. 62.23(7).
  - Town zoning ordinances enacted or amended under s. 60.61 or 60.62.
  - Shorelands or wetlands in shorelands zoning ordinances enacted or amended under s. 59.692, 61.351 or 62.231”

- 
- “Consistent with” means “furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.”
  - The essential question for decision makers:
    - Does the enactment (or amendment) of the zoning/subdivision/official map ordinance further or not contradict the objectives, goals, and policies contained in the comprehensive plan?



# **Using your comprehensive plan: What the law says**

## **– Other statutory provisions:**

- Tax increment financing districts must be in “conformity” with the comp. plan of the city, village, or town.
- Architectural conservancy districts and business improvement districts must bear a “relationship” to the local comp. plan.
- Urban redevelopment plans need to be “in accord” with the local comp. plan.
- Counties and regional planning commissions can comment on the effect cooperative boundary agreements between cities/villages and towns may have on the county or regional comp. plan.



# **Using your comprehensive plan: What the law says**

## **– Other statutory provisions:**

- Cooperative boundary agreement plans “shall describe how it is consistent with each participating municipality’s comprehensive plan.”
- Water supply plans (required under the Great Lakes Compact) must include “[a]n analysis of how the plan supports and is consistent with any applicable comprehensive plans, as defined in s. 66.1001(1)(a).”
- Farmland preservation plans must be be “consistent with the comprehensive plan” and farmland preservation zoning ordinances must be “substantially consistent with the farmland preservation plan.”



# **Using your comprehensive plan: What the law says**

- Other statutory provisions:
  - Help qualify for certain programs funded by the Wisconsin Housing and Economic Development Authority.
  - Help determine the appropriate location for medical waste incinerators.
  - Authorize the rezoning of registered lands for nonmetallic mineral extraction operations.
  - Influence the location of wind energy facilities

An aerial photograph of a suburban area with green lawns, trees, and winding roads, serving as a background for the title.

# Updating the Plan: What the law says

- Implementation element.
  - “The element shall include a process for updating the comprehensive plan. A comprehensive plan under this subsection shall be updated no less than once every 10 years.”
    - Wis. Stat. § 66.1001(2)(i).



An aerial photograph of a suburban area with green lawns, trees, and a road, serving as a background for the title.

# Questions

- What is meant by an “update”?
  - Is an “update” the same as an “amendment”?
  - Is there a difference between making “major” changes to the plan versus a few “minor” changes?



# Answers

- Look to the implementation element

An aerial photograph of a suburban area with green lawns, trees, and winding roads, serving as a background for the top half of the slide.

# Note

- The law does not mandate a total revision of the plan.
- Minor changes (amendments) might be all that is needed for an “update.”



# **Don't forget about the public participation plan**

- It is required to address “every stage” of the comprehensive planning process including amendments/updates.
  - Wis. Stat. § 66.1001(4)(a).

An aerial map of a suburban area with green fields, clusters of houses, and winding roads. The map is slightly faded to serve as a background for the title.

# Why Update Plans?

- Evaluate current plan – what works? What does not?
- Innovation
  - Village of Weston's broadband element
- What are the current issues and opportunities?
  - “Times they are a changing”



# Changing Legal Landscape:

## **RECENT COURT DECISIONS**



# Signs

- *Reed v. Town of Gilbert*, 576 U.S. \_\_\_\_ (2015)
  - Sign codes that distinguish between political signs, temporary directional signs, etc., will be considered to be content-based in violation of 1<sup>st</sup> Amendment Protections.
  - These laws likely will be struck down “regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.”





# Housing Discrimination

- *Texas Dep't of Hous, & Cmty Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. \_\_\_\_ (2015)
  - “The FHA ... was enacted to eradicate discriminatory practices ... includ[ing] zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”



# Housing Discrimination

- *Texas* case cont'd
  - “...[It] allow[s] private developers to vindicate the FHA’s objectives and to protect their property rights by stopping municipalities from enforcing arbitrary and, in practice, discriminatory ordinances barring the construction of certain types of housing units.”
  - Do not need to prove the discrimination was intentional.

# What about Tiny Houses?



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# Telecommunications

- If local governments want to deny a cell tower, they must state reasons with sufficient clarity in a written record issued essentially contemporaneously with the denial.
  - *T-Mobile South, LLC v. City of Roswell*, 574 US \_\_ (2015).
- Note 2013 Wis. Act 20
  - Preempts local authority to regulate cell towers in Wis.
  - 2017 AB 130 and 2017 AB 161 seek to restore some local authority over regulating cell towers in residential districts

An aerial map showing a landscape with green fields, blue water bodies, and a network of roads and paths. The map is slightly blurred and serves as a background for the title.

# Pending cases of note

- U.S. Supreme Court
  - *Murr v. Wisconsin*
    - How to evaluate lot merger requirements under the regulatory takings analysis
- Wisconsin Supreme Court
  - *AllEnergy Corp. V. Trempealeau County Environment & Land Use Committee*
    - If an applicant agrees to all the conditions, must a conditional use permit be approved?





# Changing Legal Landscape:

## **RECENT LEGISLATION**



# Livestock Siting Law

- Adopted in 2004 (Wis. Stat. 93.90)
  - Rules adopted by the Dept. of Agriculture, Trade and Consumer Protection in 2006 (ATCP 51).
- If a local government wants to regulate livestock siting, they must follow the state rules.
- Applies to new and expanding livestock facilities if they will have 500 animal units (AU) or more and expand by at least 20% (unless lower local threshold approved prior to 7/9/03).
  - 1 dairy cow = 1.4 AU



# Planning for Agriculture

- Local governments, however, can adopt an agricultural zoning district where the livestock facility is prohibited based on public health or safety reasons as long as there is another agricultural district that allows operations of all sizes.
  - E.g., Town of Lamartine, Fond du Lac County

An aerial map of a coastal area, showing a mix of green land, blue water, and grey infrastructure like roads and bridges. The map is slightly faded to serve as a background for the title.

# 2011 Wis. Act 170

- Limits local government authority to deal with nonconforming structures
  - Eliminates the “50% rule”
  - Changes to Shoreland Zoning



# 2013 Wis. Act 74

- Vested Rights
  - Local governments must approve, deny, or conditionally approve a permit application for a building, zoning, driveway, stormwater, or other activity related to land development solely based on requirements existing on the date the local government receives the application.
  - If multiple approvals are required, requirements existing on the date of the application for the first approval apply.
  - Wis. Stat. § 66.10015.



# 2015 Wis. Act 391

- Prohibits a county from enacting a “development moratorium”.
- Requires that local governments provide a method for landowners to receive written notice of potential action that may affect the allowable use of the landowner’s property.
- Specifies that a conditional use permit issued by a local government need not be consistent with its comprehensive plan.
- Prohibits enacting a “down zoning ordinance” unless the ordinance is approved by at least two-thirds of the members of its governing body or is approved by the landowner.





# Changing Legal Landscape:

## **MARKET TRENDS**

# Remember the Origins of Town Zoning in Wisconsin

- Economic devastation of the cutover (1920s – 1930s) in Wisconsin: an early land use crisis



# Nation's First Rural Zoning Ordinance

- Oneida County
  - Adopted May 16, 1933
  - Address financial difficulties facing county due to people living in remote areas of county
  - Designated areas where activities could be conducted



# The Sharing Economy

- On-line marketplaces for peer to peer goods and services
  - Short-term home/room rentals





# The Sharing Economy

- Should local governments regulate?
  - Room tax issue






# Urban Agriculture

- Interest in knowing where your food comes from
  - “Buy local” movement
- Back-yard chickens
- Front-yard gardens
- Community gardens
- Bees




# Urban Agriculture

- Should local governments regulate?



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# Technology

- What will be the impact of driverless vehicles?





Thank You  
**QUESTIONS?**