

# Possible Legal Challenges associated with “Comprehensive Planning” and “Land Use Regulations” after Jan. 1, 2010

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## Simple Challenges

1. Simple challenge on grounds zoning decision, land division decision, or mapping “decision is not *consistent with*” the comprehensive plan or ordinance adopted or amended after January 1, 2010:
  - a. **First Example:** Property owner currently zoned agriculture, requests rezoning to small lot residential zone to construct a single family home. Under either town, village, city or county zoning ordinance, the governing body denies rezone. Property owner sues town or county on grounds that the town or county comprehensive plan indicates area was intended for future residential growth.
    - i. Note legal challenge on grounds that decision was not “*consistent with comprehensive plan.*” {Note “*consistent with*” defined in Sec. 66.1001 (1)(am) of Wis. Statutes to mean “*furtheres or does not contradict the objectives, goals, and policies contained in the comprehensive plan.*” }
    - ii. Town, village, city, or county may defend on the grounds that by denying the request for rezone, there was no ordinance enacted or amended. {Note Sec. 66.1001 (3) as amended in 2009 Wis. Act 372:  
**(3) ORDINANCES THAT MUST BE CONSISTENT WITH COMPREHENSIVE PLANS.** Except as provided in sub. (3m), beginning on January 1, 2010, if a local governmental unit enacts or amends any of the following ordinances, the ordinance shall be consistent with that local governmental unit’s comprehensive plan:  
(g) Official mapping ordinances enacted or amended under s. 62.23 (6).  
(h) Local subdivision ordinances enacted or amended under s. 236.45 or 236.46.  
(j) County zoning ordinances enacted or amended under s. 59.69.  
(k) City or village zoning ordinances enacted or amended under s. 62.23 (7).  
(L) Town zoning ordinances enacted or amended under s. 60.61 or 60.62.  
(q) Shorelands or wetlands in shorelands zoning ordinances enacted or amended under s. 59.692, 61.351 or 62.231.
  - iii. Town, village, city, or county may defend on the grounds that although the comprehensive plan indicated area was intended for future residential growth, the decision to deny was still “*consistent with*” comprehensive plan, because the future residential growth was intended for later in twenty year vision and thus denial consistent, which may depend upon how the plan was drafted.

- b. **Second example:** Property owner currently zoned agriculture, requests rezoning to small lot residential zone to construct single family home. Under town, village, city or county zoning the rezone is granted, but neighbors object. Possible challenge by neighbors on grounds that decision to rezone was not “*consistent with*” comprehensive plan.
  - i. Challenge may be brought in this case, because the rezone was an amendment to the zoning ordinance.
  - ii. Town, village, city or county will need to defend rezoning to small lot residential by pointing to the “comprehensive plan” arguing that the rezone “*furtheres or does not contradict the objectives, goals, and policies contained in the comprehensive plan.*”
  
- c. **Third example:** Citizen who does not believe in comprehensive planning and owns land in the town, village, city, or county, which has a zoning ordinance, land division ordinance, or official map (all enacted prior to January 1, 2010). Citizen tries to make a point by bringing legal action against the town, village, city, or county arguing that the regulatory ordinances are not “*consistent with*” the comprehensive plan. Citizen points out in legal pleadings inconsistencies within some of the elements of the plan and inconsistencies with existing zoning.
  - i. Town, village, city, or county may defend challenge on the grounds that legal suit not based on decision to adopt or amend an ordinance since January 1, 2010, therefore no legal basis to bring challenge.

### Challenges where no comprehensive plans exist

- a. **Fourth Example:** No town zoning or town subdivision ordinance; no county zoning (except for shoreland zoning ordinance); no county subdivision ordinance, what possible legal challenges:
  - i. County shoreland zoning decisions made after January 1, 2010 must be “*consistent with*” the county comprehensive plan
  - ii. Note there is no requirement for town comprehensive plan under the law or this fact situation
  - iii.
  
- b. **Fifth Example:** No town zoning; but town has town subdivision ordinance; county shoreland zoning ordinance; no county comprehensive zoning ordinance; no county subdivision ordinance:
  - i. Town subdivision decisions made after January 1, 2010 must “*consistent with*” town comprehensive plan
  - ii. County shoreland zoning decisions made after January 1, 2010 must be “*consistent with*” the county comprehensive plan
  
- c. **Sixth Example:** No town zoning; no town subdivision ordinance; county comprehensive zoning ordinance applicable in town; and county subdivision ordinance, property owner seeks rezone at the county level on land outside of shoreland zoning area and county approval of plat on this land for a residential

development. Town does not have town comprehensive plan, but town board adopts resolution under Sec. 59.69 (5)(e) of Wis. Statutes to veto the rezone.

- i. County rezoning decision after January 1, 2010 must be “consistent with” county comprehensive plan
- ii. Question does town board have authority to veto rezoning under Sec. 59.69 (5)(e) of Wis. Statutes if the town does not have a comprehensive plan?
  1. Could the town argue that the town veto is “consistent with” the county comprehensive plan and the county rezone was what was not “consistent with” the county plan (will depend upon facts and language in the county plan
  2. Question may be who will bring the legal action, if the county determines that the town veto is not valid, probably the town would seek legal review. If the county recognizes the town veto and does not grant the rezone, then likely the property owner would seek legal review.
- iii. Change facts in this case to provide that the town has a comprehensive plan which is different than the county plan for the area in question, could town veto the rezone request on grounds that the rezone was not consistent with the town comprehensive plan?
  1. My thought is yes the town veto would stand, because the veto was based upon the town comprehensive plan.
  2. Note no legal requirement that the county comprehensive plan and the town comprehensive plan must be “consistent with each other.”

***Hypothetical case #1:***

*Property owner Jones asks for land division both within shoreland area (300 feet of river and 1,000 feet of a lake) and beyond. Proposed land division must comply with county shoreland ordinance and town subdivision ordinance, with county shoreland ordinance controlling within shoreland area. {Question if town land division ordinance is more restrictive than county shoreland zoning, will town’s land division restrictions control? No cases on this specific question to my knowledge.}*

***Hypothetical case #2:***

*Assume no county comprehensive plan has been adopted. Property owner White requests zone change outside of shoreland area from agriculture to residential. If county board approves zone change, neighbors may sue on grounds that the rezone was not consistent with any county comprehensive plan because none existed. If county denies property owner White request for zone change, White may sue on grounds that county zoning is not enforceable because county has no consistent comprehensive plan. {My comment that it may be up to court to decide what the remedy may be in either of these cases. Circuit court may refer matter back to county to adopt plan or may say that the county zoning ordinance is not enforceable without a county comprehensive plan.}*

***Hypothetical case #3:***

*Assume town zoning in a county with county zoning ordinance. Property owner Black asks town for rezone and land division outside of shoreland area.*

*Town approves both rezone and subdivision application as consistent with town comprehensive plan. County denies the approval of the rezone by town (under Sec. 60.62(3) of Wis. Statutes procedures) on grounds that the proposed rezone is not consistent with the county comprehensive plan. County approval of town rezones is required under Sec. 60.62 (3) of Wis. Statutes if county has comprehensive county zoning ordinance. {My comments are that the county denial of the town rezone probably would stand in a legal challenge because there is no requirement under state law that the county plan and the town plan must be consistent with each other yet town rezoning under town ordinance is not valid in a county with county zoning ordinance until county board approves.}*

Rick Stadelman's final comments:

1. Sec. 59.69 (3)(b) of Wis. Statutes states that:

*(b) The development plan shall include the master plan, if any, of any city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any, of such city or village, that was adopted under s. 62.23 (6) in the county, without change.*

This section existed before the creation of comprehensive planning under Sec. 66.1001.

This section may force the county or village to enforce the city or village plan and/or official map within the extraterritorial area of the neighboring town.

This action would be inconsistent with 2009 Wis. Act 399 which reversed the city or village authority to deny plats in the extraterritorial areas of towns based upon land use proposed in the proposed plat.

2. It is of benefit to towns, villages, cities, and counties to work together to have consistent comprehensive plans to avoid the conflict of different decisions based upon conflicting plans.
3. Remember that other legal challenges based upon failure to follow proper procedure in ordinances, or arbitrary and capricious decisions, etc. can still be brought.
- 4.. There will certainly be some legal challenges in the future brought by property owners denied rezoning, land divisions, or other approvals, and by neighbors and other disgruntled citizens when rezoning, land divisions or other approvals are granted over their objections.  
**Don't be afraid of legal challenges, just be prepared to defend decisions based upon the law.**