

Comprehensive Planning Law Changes (Wis. Stat. § 66.1001)

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2009 Wisconsin Act 372

- Delays consistency requirement for some
- Clarifies village powers issues for towns
- Clarifies nature of the plan
- Clarifies the consistency requirement
- Clarifies final plan submittal requirement

Delay of consistency requirement

- 2009 Wis. Act 372 delays the consistency requirement until 1/1/12 if:
 - Applied for grant but did not receive one and adopts resolution stating they will adopt a plan
 - Has received a grant and been granted an extension of time by DOA

Village Powers

- 2009 Wis. Act 372 deletes statement that towns “that exercise village powers” could adopt a comprehensive plan.
 - Implication: towns do not need village powers to adopt a comprehensive plan
- ****BUT**, towns still need village powers for plan implementation tools like zoning ordinances and subdivision ordinances

The Nature of the Plan

- 2009 Wisconsin Act 372
 - Comprehensive plan is “a guide to the physical, social, and economic development of a local governmental unit”
 - “The enactment of a comprehensive plan by ordinance does not make the plan by itself a regulation.”

Consistency

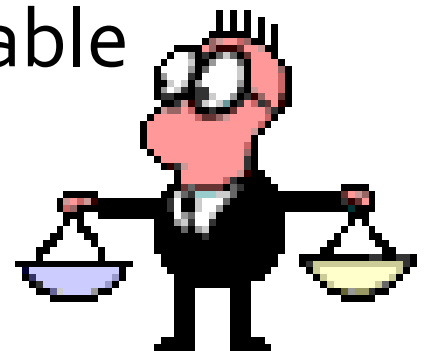


Origins of the “Consistency Issue”

- 1926 Standard State Zoning Enabling Act
 - “. . .in accordance with a comprehensive plan”
 - 1928 Model City Planning Enabling Act’s concept of a “master plan.”
- Prof. Charles Haar, *“In Accordance with a Comprehensive Plan”* (1955); *“The Master Plan: An Impermanent Constitution”* (1955).
 - Zoning without a plan is *per se* unreasonable

Defensible decisions

- Does a proposed regulation advance a legitimate public interest
- Is the proposed regulation a reasonable way to accomplish that public interest?
- Can you document the relation between the regulation and the public interest?
- Does the regulation allow a reasonable economic use of property?
- Is the regulation fairly applied?

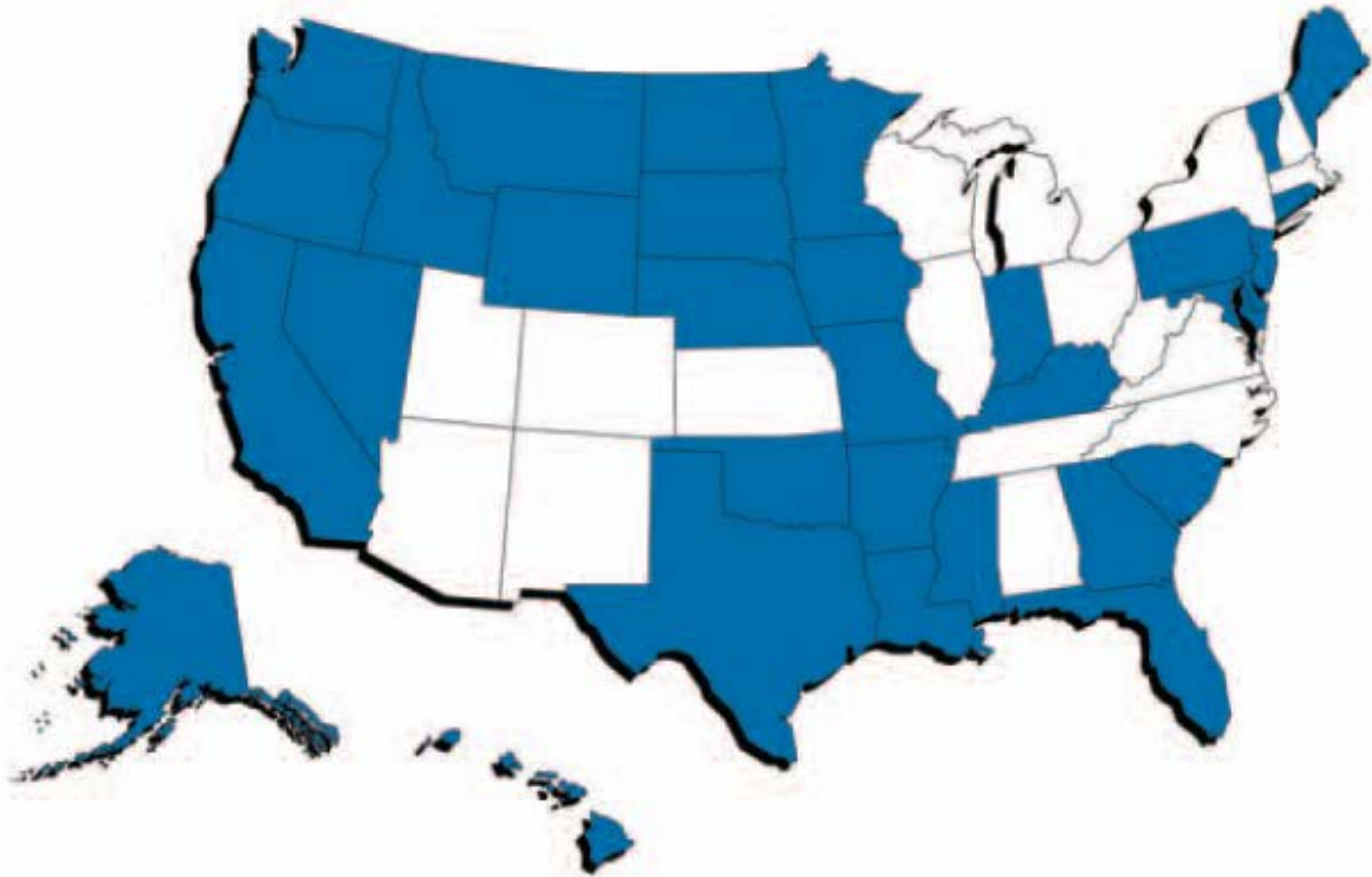


Peterson v. Dane County,

136 Wis. 2d 501, 510, 402 N.W.2d 376, 381 (Ct. App. 1987)

- “failure of the city to advance any rationale for not following its comprehensive plan is strong evidence of arbitrary action.”

States that require zoning/planning Consistency (pre – 2010) [from the Am. Planning Assoc.]



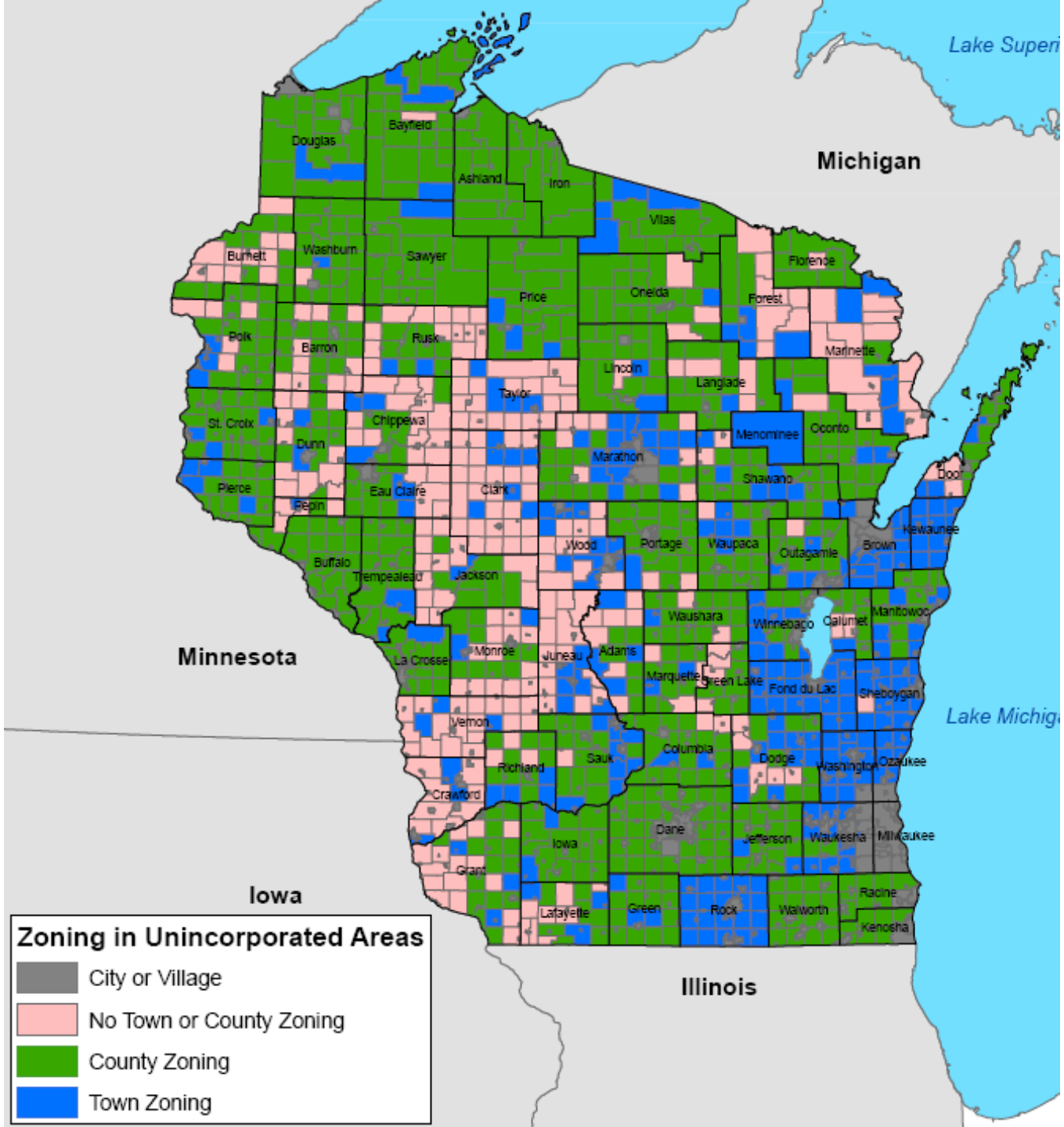
66.1001(3) – old version

- “Beginning on January 1, 2010, if a local governmental unit engages in any of the following actions, those actions shall be consistent with a local governmental unit’s comprehensive plan:
 - Official mapping established or amended under 62.23(6).
 - Local subdivision regulation 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.
 - Zoning of shorelands or wetlands in shorelands under s. 59.692, 61.351 or 62.231.”

66.1001(3)

2009 Wisconsin Act 372 version

- ~~Beginning~~ Except as provided in sub. (3m), beginning on January 1, 2010, if a local governmental unit ~~engages in~~ enacts or amends any of the following ~~actions, those actions~~ ordinances, the ordinance shall be consistent with that local governmental unit's comprehensive plan:
 - Official mapping established ordinances enacted or amended under s. 62.23(6).
 - Local subdivision ~~regulation~~ 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.
 - ~~Zoning of shorelands~~ Shorelands or wetlands in shorelands zoning ordinances enacted or amended under s. 59.692, 61.351 or 62.231.



Other consistency requirements

- *"exclusive agricultural zoning ordinances shall be consistent with county agricultural plans."*
- cities, villages, and towns need to make a finding that the plan for a proposed tax increment financing district is in *"conformity"* with the master plan of the city, village, or town.
- The creation of an architectural conservancy district or a business improvement district requires a description of the *"relationship"* of the district to the local master plan.
- Urban redevelopment plans need to be *"in accord"* with the local master plan.
- Redevelopment authorities in first class cities must make the finding that the purpose for issuing bonds for public school facilities *"is consistent"* with the city's master plan.
- Counties and regional planning commissions are allowed to comment on the effect that cooperative boundary agreements between cities or villages and towns may have on the county development plan or the regional master plan.

A comprehensive plan can also:

- Help establish the basis to include non-housing facilities for certain programs funded by the Wisconsin Housing and Economic Development Authority;
- Establish street widths in cities and villages;
- Help determine the appropriate location for medical waste incinerators;
- Authorize the rezoning of registered lands for nonmetallic mineral extraction operations.

A comprehensive plan can also:

- Establish priority for state funding
 - Knowles/Nelson Stewardship funding
 - “. . .If requests for state aids exceed the funds allotted to the department for this program, those requests which form an integral part of a **comprehensive plan** shall be given first priority.”

Additional consistency requirements since 1999

- A cooperative boundary agreement plans "*shall describe how it is consistent with each participating municipality's comprehensive plan.*" 2007 Wis. Act 43
- Water supply plans (required under the Great Lakes Compact legislation) 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).*" The DNR will not approve any water supply plan that is not consistent with any applicable comprehensive plan. 2007 Wis. Act 227
- The Working Lands Initiative requires that county farmland preservation plans be "*consistent with the [county] comprehensive plan*" and that the farmland preservation zoning ordinance be "*substantially consistent with the [county] farmland preservation plan.*" 2009 Wis. Act 28.

Additional consistency requirements since 1999

- Wind Facility Siting Law
 - “A political subdivision may deny an application for approval if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development, as shown in a map that is adopted, as part of a comprehensive plan . . . before June 2, 2009, or as shown in such maps after December 31, 2015, as part of [an updated] comprehensive plan This subdivision applies to a wind energy system that has a nominal capacity of at least one megawatt.” 2009 Wis. Act 40

What does “consistent” mean?

- “in agreement; compatible. . . .Not contradictory”
 - Wisconsin Supreme Court in *Lake City Corp. v. City of Mequon*
 - Interpreting Wis. Stat. § 236.13(1)(c) (1995): “Approval of the preliminary or final plat shall be conditioned upon compliance with: . . . (c) Any local master plan which is consistent with any plan adopted under s. 236.46 [county future platting plans] or official map adopted under s. 62.23.”



2009 Wisconsin Act 372

- “Consistent with’ means furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.”

Consistency

- Distinction between the limited tools the law says must be consistent with the plan and the many issues covered in the comprehensive plan.
- Other programs *should* be consistent

Impact on Chapter 236

- 2009 Wis. Act 237 repealed language in 236.13(1)(c) that approval of plat can be conditioned upon approval of comp. plan.
 - Important for local subdivision ordinances to include language that plats must be consistent with the local comprehensive plan

Guidance from the other States



Citizen Advocates for a Livable Missoula, Inc. v. City Council and Mayor of the City of Missoula (Mt. 2006)

- Proposed “big box” Safeway grocery store
- City Council approved subject to conditions
- MT Law
 - Governing body “must be guided by and give consideration to” the city’s growth policy
 - Zoning must be “in accordance” with a growth policy
- Ct.’s interpretation: “substantial compliance”
- Not every zoning proposal will be consistent with every goal and objective in a city’s growth policy

Sustainable Growth Initiative Committee v. Jumpers, LLC. (Nev., 2006)

- Challenge to growth initiative limiting new dwelling units in county to 280/year
- Zoning must be “in accordance” with the master plan
- County master plan suggested an annual growth rate between 2 and 3.5%
- 280 units/year is about 2%, but will decrease each year
- The limitation was in “substantial compliance” with the master plan because the initiative “mirrors the policies and concerns of the master plan.”
- Zoning ordinance need not be in perfect conformity with every master plan policy

Mendota Golf, LLP v. City of Mendota Heights (Minn. 2006)

- Golf course owners purchased course.
- Zoning ordinance designated the property R-1
 - Golf courses are conditional uses in R-1 districts
 - City has no golf course zoning district
- Comp. plan designated the property “Golf Course”
- Owners want to develop the property
- Zoning shall not “conflict with” the comp. plan
- City not required to amend its comp. plan
- But, city must resolve zoning/comp. plan conflict

Consistency depends on the community

- A fully developed community with a stable economy might be able to develop a detailed plan map that is similar to the zoning map

Consistency depends on how the plan is written

- Text part of the plan
 - Explain what the community wants to happen
- Map part of the plan
- How the plan is written is a policy decision
- How the plan is written depends on the community

Consistency between plans: Whose plan controls?

- Whose plan controls?
- Nothing says the county's plan controls over town plans!
- Key point: The 1999 Comprehensive Planning Law did not give or take away authority from any local unit of government
- Local governments need to plan for things they have jurisdiction over



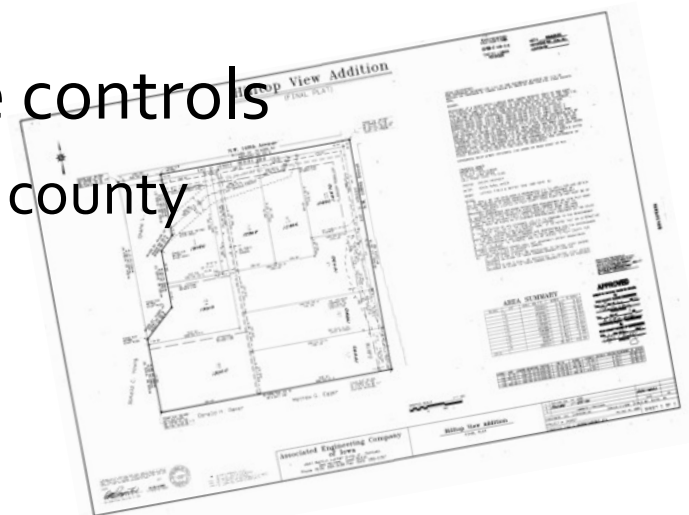
Example: Zoning Authority

- Towns that are unzoned do not need to plan for zoning
- Towns that have their own zoning, need to plan for that zoning
- Towns under county zoning, need to work with the county
 - The county does not have unilateral authority. It is a partnership.
 - Towns choose if they want to fall under county zoning
 - Role of town veto



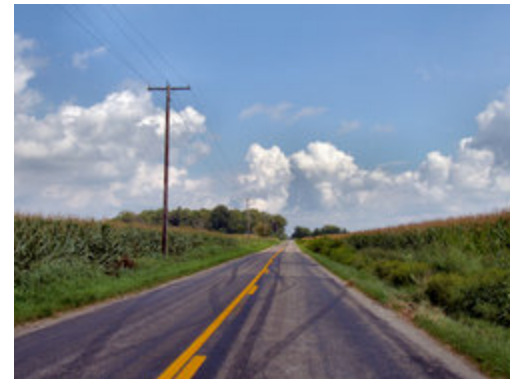
Example: Subdivision Authority

- If a town regulates land divisions, it must plan
- If a county regulates land divisions, it must plan
- Both the town and the county can have land division regulations
 - The most restrictive ordinance controls
 - It may be the town, it may be the county



Example: Roads

- Towns plan for town roads. Counties can't set standards for town roads.
- Counties plan for county highways. Towns can't set standards for county roads.



Example language from land use element

- When development occurs, it must respect the natural features of the site
- Use graphics – when development occurs, it should look like this . . .
- We will only rezone land in area A to “Industrial” when the improvements to county highway Z are complete

Implementation element

- A compilation of programs and specific actions to be completed in stated sequence, including proposed changes to any applicable zoning ordinances, official maps, or subdivision ordinances, to implement the objectives, policies, plans and programs contained in the comprehensive plan



Examples of how to address consistency in the Implementation Element

- Within 6 months following the adoption of the comprehensive plan, we will do the following:
 - rezone parcels in the southern part of the Town where the uses do not reflect current zoning
 - change standard X in the zoning ordinance to allow Y
 - rezone area A to commercial to encourage commercial uses
- Within 2 years following the adoption of the comprehensive plan we will do the following:
 - Develop a new conservation development zoning district
 - Rezone parcels to new district
 - Develop a subdivision ordinance
- Within 5 years following adoption of the plan . . .

GENERAL PLAN AND ZONING CONSISTENCY MATRIX

City of Hayward, CA

ZONING DISTRICT

ZONING DISTRICT		(Lot Area/Unit)	GENERAL PLAN MAP DESIGNATION																						
RESIDENTIAL			Rural Estate Density	Suburban Density	Low Density	Mobile Home Park	Limited Medium Density	Medium Density	High Density	COMMERCIAL	Retail and Office Commercial	General Commercial	Commercial	DOWNTOWN-CITY CENTER AREA	High Density Residential	Retail and Office Residential	INDUSTRIAL	Industrial Corridor	Mixed Industrial	OPEN SPACE	Parks And Recreation	Baylands	Limited Open Space	PUBLIC AND QUASI-PUBLIC	Public and Quasi-Public
RSB40	Single-Family	(40,000)	Consistent	Consistent																					
RSB20		(20,000)		Consistent																					
RSB10		(10,000)		Consistent																					
RSB8		(8,000)		Consistent																					
RSB6		(6,000)		Consistent																					
RS		(5,000)		Consistent																					
RSB4		(4,000)		Consistent																					
RMB4	Medium Density	(4,000)		Consistent																					
RMB3.5		(3,500)		Consistent																					
RM		(2,500)		Consistent																					
RH	High Density	(1,250)		Consistent																					
RHB7		(750)		Consistent																					
MHP	Mobile Home Park			Consistent																					
RO	Residential Office			Consistent																					
COMMERCIAL																									
CN	Neighborhood Commercial			Consistent																					
CN-R	Neighborhood Commercial/Residential			Consistent																					
CO	Commercial Office			Consistent																					
CB	Central Business			Consistent																					
CG	General Commercial			Consistent																					
CL	Limited Access Commercial			Consistent																					
CR	Commercial Retail			Consistent																					
CENTRAL CITY																									
CC-C	Central City Commercial			Consistent																					
CC-P	Central City Plaza			Consistent																					
CC-R	Central City Residential			Consistent																					
INDUSTRIAL																									
I	Industrial			Consistent																					
LM	Light Manufacturing			Consistent																					
BP	Business Park			Consistent																					
AIR TERMINAL																									
AT-IP	Industrial Park			Consistent																					
AT-C	Commercial			Consistent																					
AT-RM	Medium Density Residential			Consistent																					
AT-AC	Aviation Commercial			Consistent																					
AT-O	Operations			Consistent																					
AT-R	Recreational			Consistent																					
OPEN SPACE (Parcel Size)																									
A	Agricultural	1 Acre		Consistent																					
AB5A		5 Acres		Consistent																					
AB10A		10 Acres		Consistent																					
AB100A		100 Acres		Consistent																					
AB160A		160 Acres		Consistent																					
FP	Flood Plain			Consistent																					
OS	Open Space			Consistent																					
OTHER																									
RNP	Residential Natural Preservation			Consistent																					
SD	Special Design			Consistent																					
PD	Planned Development			Consistent																					
PF	Public Facilities			Consistent																					

 Consistent
  Potentially Consistent
  Not Consistent

FOOTNOTES: Decisions on the appropriateness of any "CONSISTENT" zoning district will need to consider the specific situation. Determinations on the consistency of districts listed as "POTENTIALLY CONSISTENT DISTRICTS" must consider compatibility with other uses and overall densities in the area, as well as the particular need to be served.

A Real Life Example

Plan Goal

- Protect agricultural land



Plan Objective

- Limit the amount of productive agricultural land lost to non-farm residential development



Policy

- Reduce maximum lot size for non-farm residential development to 2 acres
- Encourage placement of non-farm residences on non-productive agricultural soils



Implementation Action

- Amend land division ordinance to require 2 acres maximum lot size for non-farm residential development
- Amend land division ordinance to prohibit flag lots



Other resources

- "Exploring the Concept of "Consistency" under Wisconsin's 1999 Comprehensive Planning Law"
 - <http://urpl.wisc.edu/people/ohm/consistency%20and%20the%20comp%20plan.pdf>
- "Let the Courts Guide You: Planning and Zoning Consistency."
 - <http://law.wustl.edu/landuselaw/Articles/Consistency,BrianOhm.pdf>