

The Town Plan Commission

This Fact Sheet addresses the following major topics:

- ◆ Why Establish a Town Plan Commission?
- ◆ What is the Relationship Between the Plan Commission & the Town Board?
- ◆ What Authority is Necessary to Establish a Town Plan Commission?
- ◆ How is a Town Plan Commission Created & Set Up?
- ◆ What are the Powers & Duties of a Town Plan Commission?

Why Establish a Town Plan Commission?

In general. The simple answer to this question is that a town must establish a plan commission if it is to engage in certain planning and land use activities. Under the recently enacted Comprehensive Planning & Smart Growth Law (see following subheading), a town's actions and programs affecting land use must, by 2010, be consistent with the town's "comprehensive plan." To have a comprehensive plan under the new law, such plan must be developed by the town plan commission and adopted by the town board.

These are significant changes from prior law. While a town without a plan commission continues to have the implied authority to engage in less formal planning by the town board or a town plan committee¹, such a plan would not be a "master plan" or "comprehensive plan" under the statutes as affected by the new law, and would not serve as a basis for meeting the 2010 consistency requirement.

There are other reasons why a town might wish to establish a plan commission. For one, a town must establish a plan commission if it wishes to adopt a town subdivision or land division ordinance. Towns have the power to adopt such ordinances (even if they do not have zoning powers) as long as they have a "planning agency," which would be the town plan commission². Secs. 236.02(13) & 236.45(2), Wis. Stats³. In addition, having a plan commission helps ensure citizen involvement and a certain formality, objectivity and rationality for the planning process through creation of a body with statutorily specified duties that is advisory to the town board.

The New Comprehensive Planning & Smart Growth Law. Many towns will establish town plan commissions because of the new Comprehensive Planning & Smart Growth Law⁴. This law, as of January 1, 2010, requires that "any program or action of a local governmental unit that affects land use" must be consistent with that unit's "comprehensive plan." Sec. 66.1001(3). The law contains a long, non-inclusive list of such activities, which includes matters such as zoning, subdivision regulation and official mapping. A "local governmental unit" means a town, village, city, county and regional planning commission. Sec. 66.1001(1)(b). Many towns, therefore, will establish plan commissions so that they may engage in programs and activities relating to land use.

Wisconsin municipal law has long provided that the plan commission of a city, village or town with village powers prepares the unit's "master plan." Sec. 62.23(1)-(3). Under the new law a "comprehensive

plan” is defined as the “master plan” of a city, village or town with village powers, the county development plan, and the master plan for the region of a regional planning commission. Sec. 66.1001(1)(a).

Under the new law, the status of planning is elevated. In order to have a “comprehensive plan,” the plan prepared by the town plan commission and the town board must have nine specified elements and must be adopted in accordance with the law’s procedures. Sec. 66.1001(2) & (4). The new requirements emphasize involvement of the public and consideration of intergovernmental issues. Consistency requirements must be met. The elements of the plan must be consistent with each other and the land use activities and programs of the town, as of 2010, must be consistent with the plan. Secs. 66.1001(2)(i) & (3). The town board is now also required to “buy in” to the plan by enacting an ordinance that adopts the plan in order for the town to have a “comprehensive plan” under the law. In addition, the new law requires the plan to specify implementation measures and requires periodic updates. These new requirements mean that the plan will be a document that guides the town, rather than something that is used only sporadically or just gathers dust on a shelf. The use of the plan to guide the town’s actions will tend to make land use decisions more predictable and fair, and less controversial. The plan gives a reason to say “yes” or a reason to say “no” to a proposal.

For more information on the new law, see Local Government Center Fact Sheet # 15⁵.

What is the Relationship Between the Plan Commission & the Town Board?

The relationship between the town plan commission and the town board is important. The town board consists of elected officials and is primarily a policy-making body charged with conducting the town’s affairs. The plan commission is an appointed body with the main duty of developing a plan and implementation measures for recommendation to the town board for adoption. The plan commission should therefore function in a more objective fashion than the town board, but must realize that in developing plans and ordinances it operates within a political system where the town board has the final say. Having one or more town board supervisors on the commission can serve as a bridge between the citizens on the commission and the town board.

Overall, the plan commission can be of great assistance to the town board by involving citizens and developing expertise in planning, which can be a time-consuming and controversial undertaking, thereby freeing the town board to carry out its other functions. The plan commission should not be viewed as an independent, dictatorial body. Instead, it is an appointed body whose policy-making function is advisory to the town board. If the town board wishes to give additional powers to the plan commission, beyond advisory powers, it may do so. For example, as discussed below, the town board could—but is not required to—allow the town plan commission to issue conditional use permits under town zoning under village powers and allow it to approve subdivision plats.

However, even though the plan commission’s policy-making function is advisory, it should be emphasized that there must be a good working relationship between the commission and the town board. This is needed because the existence of an adopted comprehensive plan and implementation measures depends upon both bodies—the plan commission to develop the proposals with public support and the town board to support the effort and ultimately adopt the legislation and implementation programs.

What Authority is Necessary to Establish a Town Plan Commission?

Statutory authority. The authority to set up a plan commission is found in the chapter of the *Wisconsin Statutes* that applies to cities. See sec. 62.23(1). This statute also applies to villages and to towns with village powers. Secs. 60.22(3) & 61.35. Under this authority, a town board may, like a city council or village board, establish a *7-member plan commission*. Alternatively, a town board in a town under 2,500 population with village powers may set up a *5-member commission*. Sec. 60.62(4).

Village powers. A town board is authorized to exercise village powers by the town electors at the annual town meeting or at a special town meeting. Sec. 60.10(2)(c). This is a continuing grant of authority. (To determine if a town has village powers it may be necessary to check the minutes of the town meetings.)

Village powers allow the town board to exercise powers relating to villages under ch. 61, “except those powers which conflict with statutes relating to towns and town boards.” Sec. 60.22(3). The grant of village powers to the town board is recommended by the Wisconsin Towns Association staff. It should be stressed that this grant of authority does not make the town a village and does not give it such powers as to annex or regulate extraterritorial territory. *Granting village powers to the town board does not obligate the town board to take on any new responsibilities.* In general, village powers allow a town to act for the public health, safety and welfare of the town, using the broad powers granted to a village under sec. 61.34(1), unless, of course, a different procedure or requirement is set out for towns.

Planning authority under village powers. One of the village powers that a town board may exercise is village planning authority under sec. 61.35. This statute in turn provides that villages have the authority granted cities under sec. 62.23. This latter statute includes authority for cities to set up a plan commission and develop a master plan/comprehensive plan. The net result is that a town with village powers may establish a plan commission and develop a master plan, also known as a comprehensive plan.

How is a Town Plan Commission Created & Set Up?

Creation by ordinance. A plan commission is created by an ordinance of the town board Secs. 62.23(1) & 60.62(4). The ordinance may create a *7-member commission* or, if the town is under 2,500 population, a *5-member commission*.

Appointment; membership. The town board chairperson appoints the members of the commission and chooses the presiding officer (commonly called the chair or chairperson) of the 7-member commission. The town board chairperson may appoint himself or herself and may appoint town elected and appointed officials to the commission. However, there must be at least 3 citizen members who are not town officials on the 7-member commission. (Care should be taken not to appoint town staff who might have conflicts of interest arising from the exercise of their town duties.) Citizen members are supposed to be people of “recognized experience and qualifications.” (If the town plan commission under the town’s ordinance will play a role in administering the law, care should be taken to avoid appointing citizens who will have more than occasional conflicts of interest.)

Establishing a Town Plan Commission

- Annual or special town meeting grants village powers to town board, if the board does not already have such powers
- Town board adopts ordinance specifying
 - Commission membership
 - o 7-member commission, with at least 3 public members; or
 - o 5-members (an option for towns under 2,500 population), with at least one public member.
 - o Additional membership specifications if desired
 - Commission powers & duties
- Town board chairperson appoints the presiding officer & members

The statute provides that the governing body may by ordinance provide for the composition of the plan commission. The law formerly listed various members of the plan commission, but then allowed governing bodies by ordinance to provide for the composition of the commission. This latter authority was maintained in the law, even though the listing of members was deleted. Under the new law, a town ordinance could specify the membership of the commission, but should meet the minimum requirement concerning citizen members.

Towns under 2,500 population. Towns under 2,500 may by ordinance establish a 5-member plan commission. Sec. 60.62(4)⁶. As with the 7-member commission, the town board chairperson selects the members and the presiding officer or chair. There must be at least one citizen member who is not a town official. The powers and duties applicable to the 7-member commission are also applicable to a 5-member commission. A town under 2,500 may, by ordinance, change from a 5- to a 7-member commission and vice versa.

Terms. Plan commissioners are appointed for 3-year terms. When the law was recently amended, reference to the staggering of terms of office was deleted. Nevertheless, it seems reasonable for the ordinance to provide for the staggering of the terms of the initial members, so that there is not a complete turnover at the end of the 3-year term. Town board members of the commission may be appointed to serve for shorter terms, such as during their term of office on the town board. Sec. 66.0501(2).

What are the Powers & Duties of a Town Plan Commission?

Overview. The powers and duties of a plan commission are set out in the statutes and in any applicable town ordinances. Overall, the commission should promote good planning practices in the town and keep the public and town board well-informed on planning issues.

A major function of the plan commission is to prepare the master plan, known under the new law as a comprehensive plan, and amendments to this plan. The commission also prepares implementation measures and amendments and reviews matters referred to it for recommendation to the town board. (Although these duties are assigned to the plan commission, it should be noted that the commission does not necessarily actually itself do the detailed work involved. Instead, the commission has overall oversight and coordination responsibility to see that these tasks are accomplished.) In addition, the plan commission may be engaged in the administration or application of the law, if delegated this authority by the town board.

It should be stressed that towns vary considerably in their involvement in land use and in the authority given to their plan commissions. Some towns are like cities and villages in their approach to land use, while others may exercise little regulatory authority and use their plan merely to guide their actions under county zoning and to guide town decisions on such matters as providing services, infrastructure and parks.

Rules and records. The plan commission may adopt rules for its transaction of business and must keep a record of its actions (which is subject to the public records law, secs.19.21-19.39). Sec. 62.23(2).

Commission Powers & Duties

- In general, promote comprehensive planning in the town
- Prepare & recommend to town board
 - Master plan/comprehensive plan (& amendments)
 - Ordinances & programs to implement the plan (& amendments)
- Review referred proposals for recommendation to town board
- Hold hearings & make administrative determinations/recommendations, if provided by town ordinance

General powers and duties. The plan commission in general has the powers necessary to perform its functions and promote planning. Sec. 62.23(4). It may hire staff and experts, subject to the town board's appropriation for the commission and local ordinances and town board resolutions. Sec. 62.23(1)(e). The commission may make reports and recommendations regarding the plan to the town board, other public officials and agencies, public utilities, organizations and the public. Public officials must furnish requested information to the commission, within a reasonable amount of time. In the performance of their duties, the commission and its employees may enter upon land, make examinations and surveys, and place and maintain necessary monuments and surveys.

Planning. The town plan commission develops the town's master plan and amendments to it. Sec. 62.23(2) & (3). As explained above, under the new Comprehensive Planning & Smart Growth Law, the master plan is also a comprehensive plan. It has nine required elements and must be adopted in accordance with the law's procedures. These requirements emphasize broad, comprehensive planning, citizen participation and intergovernmental communication and coordination. Under these new requirements, the plan commission recommends by resolution the proposed comprehensive plan to the town board, and the town board enacts an ordinance that adopts the plan.

The commission's charge to develop the town's plan means that the commission will oversee and coordinate this important effort. A variety of players and bodies may be involved, in addition to the town plan commission and town board: an advisory or *ad hoc* land use committee representing a broad range of local interests; town staff; county bodies and staff; private consultants; the regional planning commission and its staff; neighboring communities and jurisdictions; state and perhaps federal agencies; the public and interested community groups.

Zoning. Zoning is perhaps the most important plan implementation tool. It regulates the use of land, lot size and the height and bulk of structures, and provides standards for various types of development and activities. The plan commission plays an important part in the development and amendment of the zoning ordinance, and may play a role in its administration.

Town ordinance development and amendment. If the town has zoning under its village powers, the town plan commission develops the proposed zoning ordinance, and amendments to it, and recommends these proposed ordinances to the town board. Secs. 60.22(3), 61.35 & 62.23(7). The hearing required for adoption or amendment of a zoning ordinance may be held by the town board or the plan commission, as the town board directs. Sec. 62.23(7)(d).

Town ordinance administration (CUPs). The town plan commission may also play a role in the administration of the town zoning ordinance under village powers. The town board may by ordinance grant the authority to issue special exception permits, also known as conditional use permits (CUPs), to itself or the town plan commission, instead of leaving this authority with the town zoning board of appeals (BOA). Sec. 62.23(7)(e). Many communities favor plan commission involvement in CUPs because they relate closely to planning issues and prefer not to involve the BOA, which is the body that hears zoning variance requests and appeals of administrative decisions. Accordingly, the ordinance may provide that the plan commission makes a recommendation on CUP applications to the town board,



which has final authority over the issuance of CUPs (with review of the town board's decision in circuit court). Alternatively, the ordinance may authorize the plan commission to issue CUPs and specify that local review of this decision is to the town board (with review of the town board's decision in circuit court.)

Involvement in county zoning. The town plan commission may play a role in advising the town board on county zoning matters that affect the town under county general zoning and under special zoning ordinances, such as shoreland and floodplain zoning. Secs. 59.69, 59.692 & 87.30. While the statutes do not specifically mention the town plan commission in these activities, the town board may wish to take advantage of the town plan commission's expertise in town planning matters and seek that body's recommendation. Town actions under county zoning include: the decision to go under county general zoning; town board petitions to amend county zoning; town board exercise of disapproval authority under general county zoning over proposed amendments; and town testimony and recommendations to county bodies considering applications for zoning amendments, variances and conditional use permits (also known as special exception permits).

Official map. The official map must be distinguished from the zoning map. An official map is a regulatory tool that shows specified infrastructure such as streets, highways, parks, railroads and waterways that are part of a comprehensive surface water drainage plan. Sec. 62.23(6). The official map may show the exterior lines of planned new infrastructure specified in the statute, and planned expansions or closing or narrowing of existing infrastructure. It provides a way to prevent development on land planned for public uses. The statute provides that the map is prepared by the governing body and that amendments to the official map are referred to the plan commission for report within 60 days of reference. However, the infrastructure and features shown on the map, and especially the planned changes, relate closely to the town's master plan/comprehensive plan, whose 9 elements encompass the listed features. In light of this, the town plan commission should be the body that develops and recommends the official map (and amendments) to the town board for adoption as an ordinance.

Subdivision & land division review. The platting of subdivisions is governed by ch. 236. This chapter contains surveying, layout and other technical requirements. Under this chapter, proposed subdivisions are referred to communities, counties and state agencies for review of compliance with ch. 236, local ordinances and the master plan or comprehensive plan. Secs. 236.10-236.13. Communities may adopt subdivision and land division ordinances to further regulate how the land is divided and improved. Sec. 236.45. These ordinances can provide that site suitability, site design and environmental issues be addressed. They may require the subdivider to install on-site improvements, such as streets and sidewalks, and may require the dedication of parklands or fees in lieu of dedication. They may also ensure the availability of public services, such as sewer and water, before the land may be developed.

The town plan commission may, as with other implementation measures, develop and propose a subdivision or other land division ordinance to the town board for adoption. Regardless of whether the town has such an ordinance, proposed plats under ch. 236 are referred to the plan commission for review and recommendation to the town board. Sec. 62.23(5). The town board may delegate preliminary and final approval of subdivision plats and other proposed land divisions to the town plan commission, or may keep that authority for itself, after receiving a recommendation from the commission. However, if the town board does delegate this approval authority to the commission, final plats dedicating streets, highways and other lands must be approved by the town board. Sec. 236.10(3).

Referrals. The statutes require a number of matters to be referred to the plan commission for review and recommendation to the governing body. For example, the location and design of public buildings and the location or abandonment of parks and streets, as well as the proposed adoption (or amendment) of town zoning under village powers and of a town subdivision ordinance, must all be referred to the town plan commission for its review. See especially sec. 62.23(5) & “Referrals” box⁷. The plan commission has 30 days to report on the referred matter to the town board, unless the town board or a statute provides for a longer review period. The town board may not act on a referred matter during the review period. Failure to refer a matter specified for plan commission review may result in a court voiding the town board’s final action on the matter⁸. In addition to matters required to be referred to the plan commission, the town board may refer other matters as well. For example, while a proposed boundary agreement between the town and a city or village under a cooperative plan, proposed city or village extraterritorial zoning of town territory or a proposed airport zoning ordinance do not specifically require referral to the town plan commission, these are important land use matters that should be referred to that body. Secs. 62.23(7a), 66.0307 & 114.136(2).

Commissioners as officials. Finally, it should be noted that members of a town plan commission are considered town officials. Commissioners, like other local officials, take an oath of office swearing to support the constitution and to “faithfully discharge” their duties of office to the best of their ability.⁹ As local public officials, they are subject to laws such as the open meetings and public records laws¹⁰, and ethics and conflicts of interest laws. They are also protected by certain laws when they exercise their official duties¹¹.

While it is beyond the scope of this paper to elaborate on these matters, an important distinction should be made. When members of a town plan commission are applying their ordinances and the statutes to specific applications, they are subject to stricter laws than when they are making public policy, such as preparing a plan. When they are acting in such a “quasi-judicial capacity,” as when they review subdivision plats or consider applications for conditional use permits under the zoning law, they must follow concepts of fairness and due process that are in addition to the general ethical constraints found in such laws as the Code of Ethics for Local Officials (sec. 19.59).

In such proceedings, in addition to following notice and hearing requirements, plan commissioners must be unbiased and apply the existing legal standards to the evidence in the record. Decisions should not be based on personal opinion or information obtained outside of the record.

Referrals to Commission

- Location & architectural design of any public building
- Location of any statue or other memorial
- Location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for
 - Park, playground
 - Any street, alley or other public way
 - Airport
 - Area for parking vehicles
 - Other memorial or public grounds
- Location, extension, abandonment or authorization for any public utility whether publicly or privately owned
- All plats over which the town has jurisdiction under ch. 236, Stats.
- Location, character & extent or acquisition, leasing or sale of lands for public or semipublic housing, slum clearance, relief of congestion, or vacation camps for children
- Proposed ordinances, amendments or repeals, under sec. 62.23 (e.g., the master plan/comprehensive plan, town zoning under village powers, official map ordinances) & sec. 236.45 (subdivision or land division ordinances)
- Other matters specified by statute or ordinance for referral (e.g., proposed business improvement districts, group homes, etc.), or referred at discretion of town board

Instead, quasi-judicial determinations must be made by applying the legal standards of the applicable statutes and ordinances to the evidence in the record, which typically consists of the application, submitted materials such as reports or letters, and testimony at public hearings.

¹ Town boards have no explicit general planning authority under ch. 60 (towns) of the *Wisconsin Statutes*. Towns have the powers conferred on them by statute or necessarily implied therefrom. Pugnier v. Ramharter, 275 Wis. 70 (1957); Town of Clearfield v. Cushman, 150 Wis. 2d 10 (Ct. App. 1988). Town general planning authority may be implied from: town zoning and other land use authority; the town board role when subject to county zoning under sec. 59.69 (e.g., town rezoning disapprovals); and authority granted to towns in ch. 60 regarding such matters as acquiring land and constructing public infrastructure and facilities. Towns exercising village powers, however, have the statutory planning power of cities and villages. Secs. 60.22(3), 61.35 & 62.23, Stats.

² A “town planning agency” may also be the “town zoning committee” under sec. 60.61(4). Section 60.61(4) provides that a town may exercise zoning authority under it if the town has petitioned the county to exercise general county zoning and the county does not so act. This limited zoning authority is used by few towns. Almost all towns that have town zoning do so under sec. 60.62 (town zoning under village powers). The new Comprehensive Planning & Smart Growth Law does not even cross-reference or mention sec. 60.61 town zoning. Instead, a comprehensive plan under the new law is a town master plan, which is adopted under village powers. Secs. 60.22(3), 61.35, 62.23(1)-(3) & 66.1001, Stats.

³ All statutory references are to the *Wisconsin Statutes*, and are hereafter shown in the form “Sec. 236.02(13).” The statutes cited in this paper are as amended and effective to date. To view the *Wisconsin Statutes* and legislative bills and session acts, from the Local Government Center’s website [<http://www.uwex.edu/lgc/>], click on “Internet Resources,” and then on the appropriate link.

⁴ 1999 Wisconsin Act 9 (the budget act), as affected by 1999 Wisconsin Act 148 (often referred to as the “Smart Growth trailer bill”).

⁵ Ask your UW-Extension county office or, from the LGC’s website (see endnote 3), click on “Publications” and then view or download Fact Sheet #15.

⁶ A strict reading of sec. 60.62(4) would limit the 5-member option to towns under 2,500 that engage in zoning under village powers. This strict reading was not intended by the Wisconsin Towns Association, and the actions of a 5-member commission of a town without town zoning under village powers would in all probability not be susceptible to challenge on this basis.

⁷ In addition to sec. 62.23(5), a number of statutes require referral of proposals to the plan commission. Some of these include: sec. 48.68(3) (child welfare agency or group home); sec. 50.03(4)(community-based residential facility); sec. 62.23(7)(d)(zoning ordinance); sec. 66.0905 (designation of pedestrian malls); sec. 66.1109 (business improvement districts); sec. 66.1007 (architectural conservancy districts); and sec. 236.45(4) (subdivision ordinance).

⁸ See Scanlon v. Menasha, 16 Wis. 2d 437 (1962)(sale of playground void for non-referral). Compare Rath v. Two Rivers Community Hosp., 160 Wis. 2d 853 (Ct. App. 1991(referral of sale of city-owned hospital not necessary because term “other public grounds” in statute refers to land used for transportation and recreation).

⁹ Secs. 19.01 & 60.31. The oath must be taken and filed within 5 days of notice of appointment and before beginning the duties of office.

¹⁰ Secs. 19.21-19.39 & 19.81-98. Fact Sheets on these laws may be accessed from the Local Government Center website. Go to <http://www.uwex.edu/lgc/> and click first on Publications, and then on Fact Sheet #1 or #7. Also on the Publications page of this website, following the Fact Sheets and Papers, information may be found on obtaining these relevant videotapes: “Open Meeting Law in Action: Seven Vignettes” [#17211, 21 min., Videotape/Color (1992)]; and “Wisconsin Open Records Law” [#17390, 20 min., Videotape/Color (1992)].

¹¹ Key ethics and conflicts laws include the following: Code of Ethics for Local Government Officials (secs. 19.42, 19.58 & 19.59); limitations on “double-dipping” in compensation for serving on both the town board and town plan commission,

secs. 60.323 & 66.0501(2); Misconduct in Office (sec. 946.12); and Private Interests in Public Contracts (sec. 946.13). Claims against local officials are limited by secs. 345.05 & 893.80; and local officials' indemnification and legal representation are covered by secs. 895.35 & 895.46. The Wisconsin Ethics Board website has fact sheets and other information on ethics matters. Go to the LGC site (see endnote 10), click on "Internet Resources" and scroll down to the Wisconsin Ethics Board link. The topic of "Ethics and Liability of Local Government Officials" has been in recent Local Government Center programs in the Current Issues for Local Government Officials ETN Series. It is expected that this program will be offered periodically. The LGC website (see endnote 10) contains program information. Finally, a videotape on "Ethics and Conflicts of Interest" [#17634, 25 min., Videotape/Color (1994)] is available; for information, follow the steps in endnote 10.

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