

Dane County Land Use Handbook

Dane County Board of Supervisors

Prepared by
The Office of the County Board

Last revision 4/6/98



Summary

September 15, 1997

Dane County has land area of 1,202 square miles, and has a 1997 population of 402,988. Approximately half of Dane County residents live in the City of Madison, 31.5 percent in small cities or villages, and 18 percent in towns. The County's population has grown by 9.8 percent since 1990. This growth has occurred in incorporated and unincorporated areas alike. In the past five years (1992-1996):

- 13,345 parcels were created by subdivision or certified survey map; 24 percent of these parcels were in towns.
- The majority of all parcels were created by subdivision. Over 10,000 parcels were created by subdivision throughout Dane County, with 87.5 percent of these parcels created within cities or villages.
- Over 3,000 parcels were created by certified survey map, with 63 percent of these parcels created within towns.
- An average of 16 percent of new residential units have on-site wastewater systems.

The County Board and its committees play an important role in determining the patterns of growth and development in Dane County. However, land use decision making involves many levels of government and is governed by laws, ordinances, regulations and common practices. This handbook seeks to provide county supervisors with basic information on the specific land use authority granted to each level of government; inter-relationships among state, county, town, and municipal governments; and land use decision making processes. More detailed information is available from a wide variety of other sources.

State Statutes grant authority for the role of state agencies, regional planning commissions, county, town, and city and village governments.

- State agencies generally use their administrative rule making authority to influence land use development throughout the state. Agencies tend to review and approve various local plans, such as county Farmland Preservation Plans and requests for urban service area expansions, rather than make decisions on specific land use issues.
- Statutes provide county government in Wisconsin with the authority to make land use decisions, in cooperation with town government, in unincorporated areas. Counties may prepare a general development plan and can adopt a zoning ordinance with town approval.

- Town government is granted the authority to develop park and agricultural preservation plans, as well as exercise shared zoning authority with counties.
- Cities and villages have broad planning and zoning authority within their corporate limits. In addition, in certain circumstances, municipalities can exercise extraterritorial zoning authority.
- Statutes grant Regional Planning Commissions the authority to make and adopt a master plan for the physical development of the region.

Various board and commissions at each level of government have been formed to implement the land use authority specified by Statute. For example, the Land and Water Conservation Board certifies Farmland Preservation Programs at the state level; the Dane County Zoning and Natural Resources enforces the County's zoning and land division ordinances; town plan commissions review local requests for zoning changes and develop updates to town plans; and city and village planning commissions exercise planning authority.

Land use decision processes can be complex, involving multiple steps and several levels of governmental approval. A single action, such as updating a town land use plan, can require actions by various boards and governing bodies at the town, RPC, County, and State levels. This handbook is intended to help the Dane County Board of Supervisors to understand its unique role in the intergovernmental relationships regarding land use.

Statutory Authority



Land Use: The Statutory Authority Of State Agencies

August 25, 1997

Wisconsin State Statutes specify land use responsibilities and authority of all levels of government, including state agencies. The following is an brief overview of the major responsibilities of state agencies and their relevant boards or commissions regarding land use.

Department of Natural Resources

The DNR has multiple and diverse land use responsibilities, including:

- Development of long-range plans for conservation as part of its charge to manage state lands, create fish and bird refuges, and protect forests from fire and other hazards.
- Development of a master plan for each state recreational area.
- Approval of the lake protection and rehabilitation plans of the public inland lake protection and rehabilitation districts, created by municipalities and counties.
- Issuance of permits or licenses for solid waste disposal facilities, operation of mineral extraction activities, and hazardous waste transportation, storage, and disposal.
- Implementation of state and federal water quality regulations, including approval of water quality management plans and sewer system expansions.
- Provision of funding to counties for development of outdoor recreation facilities.
- Provision of financial assistance for planning and construction of pollution abatement facilities.
- Administration of the priority watershed program.

Department of Agriculture, Trade, and Consumer Protection

One of the primary responsibilities of the Department of Agriculture, Trade, and Consumer Protection (DATCP) is the administration of the Farmland Preservation Program. The purpose of the program is to give tax relief to farm owners and to preserve farmland. Farm owners receive tax relief by claiming a credit on their income tax return against their property taxes. As a requirement of receiving the credit, the property must remain in agricultural use and generally under exclusive agricultural zoning.

The program involves three levels of government: the state, the county, and the municipality (usually a town). DATCP prepares maps that locate lands which should be considered for preservation. The county must adopt an agricultural preservation plan, and exclusive agricultural zoning must be in effect in the town to allow the owner to receive 100 percent of

the available credit. After town and county adoption, exclusive agricultural zoning ordinances must be submitted to the Land Conservation Board for review and certification.

Land and Water Conservation Board

The state's Land and Water Conservation Board plays a broad land use policy role, affecting the administration of programs regarding local land use, including the farmland preservation program. The 11-member Board advises DATCP on all matters related to soil and water conservation, animal waste management, and farmland preservation.

The Board's duties include:

- Certification of agricultural preservation plans and zoning ordinances;
- Review and recommendations to DATCP on erosion control plans, waste management and agricultural shoreland management ordinances;
- Advising the UW System annually about research and education programs related to soil and water conservation; and
- Assistance to the DNR on issues related to the Nonpoint Source Pollution Abatement Program, and designating new priority watersheds.

Department of Commerce

The Wisconsin Department of Commerce (DOC) is required to develop a state economic policy and assist in the formulation and implementation of integrated regional economic and community development programs. Section 560.08 of State Statutes mandates that the Department:

- Assemble and correlate information relating to all facets of the state's economic resources;
- Coordinate its comprehensive economic development plans with local and regional planning and economic development agencies,
- Assist planning for metropolitan or regional areas.

In addition to its broad role which affects land use, DOC and counties administer codes regulating the design and installation of private septic systems. While the DNR has the authority to approve public sewer system extensions, the DOC sets and enforces standards for the construction, installation, and maintenance of plumbing in all buildings in the state, including private sewage systems. The DOC develops standards, set forth in administrative rules, and county government is responsible for the regulation of private sewage systems.

The DOC also has statutory authority to approve municipal boundary plans and to review annexations. The Department of Revenue actually conducts these reviews under a memorandum of understanding with DOC. The criteria used by the department to evaluate cooperative plans include adequate provision for delivery of services to the territory covered by the plan, adverse environmental consequences are identified and addressed, and the need for safe and affordable housing will be met. The department's decision to approve or disapprove a plan is subject to judicial review. The Department also provides an advisory review of annexations in counties of 50,000 or more population.

Land Information Board

The Land Information Board implements the state's land information program and coordinates Wisconsin's efforts to modernize its land records. It is the state's clearinghouse for land information and land information systems, including the physical, legal, economic, and environmental information about Wisconsin's land, water, and air. The duties of the 13 member Board include:

- Providing technical assistance and advice to state agencies and local governments;
- Keeping an inventory of available land information records;
- Providing guidelines for record modernization;
- Reviewing countywide modernization plans; and
- Administering grants for modernization projects for local governments located in counties that have established a land information office and have an approved countywide plan.

Other Resources

Approaches to an Evaluation of the Wisconsin Farmland Preservation Program: The Case of Dane County, UW-Madison Department of Urban and Regional Planning, a Planning Workshop Project, Spring, 1992.

Dane 2020: State Participation in Growth Management and Intergovernmental Conflict Resolution, October 4, 1991.

Statutory Summary for the State of Wisconsin, American Planning Association, Growing Smart, updated May, 1996.

County and Local Government Land Use Planning and Regulation, James, H. Schneider, UW-Extension: Local Government Center.

prepared by: Karin Peterson, Policy Analyst
Office of the County Board



Land Use: The Statutory Authority Of Counties

August 18, 1997

Wisconsin State Statutes specify land use responsibilities and authority of county governments. Counties play a role both in broad land use planning and in specific decisions governing the use of individual parcels of land. The following is a brief overview of the major responsibilities of county government regarding land use.

Planning Authority

County planning and zoning functions are generally authorized in Sections 59.69 to 59.70, Wis. Stats. The County Board can assign the planning role to a “county zoning agency”. Counties have the authority to develop a county development plan for the unincorporated area in the county and for those incorporated areas whose governing bodies request to be included in the plan. The county development plan incorporates adopted city and village master plans and official maps. Dane County has not officially adopted a county development plan.

Counties are also authorized to develop other functional plans under other statutory authority, including:

- Agricultural preservation plans, under the Farmland Preservation Program. These plans must be consistent with the county development plan and with state standards. Agricultural preservation plans include local plans that meet state standards. Dane County has an agricultural preservation plan which includes the town land use plans as components.
- A comprehensive park system plan developed by a county park commission or park manager. In Dane County, the Parks and Open Space Plan serves as the comprehensive parks plan.
- If identified as a priority soil erosion control county by the Department of Agriculture, Trade, and Consumer Protection (DATCP), then the land conservation committee in that county shall prepare and submit a soil erosion control plan. DATCP reviews and approves the plans. Dane County has a Soil Erosion Control Plan.
- A Lakes and Watershed Plan (Dane County only). Section 33.45, Wis. Stats. provides the Dane County Lakes and Watershed Commission with the authority to develop and implement plans.

Zoning Authority

Statutes provide two general approaches to implement plans: zoning and subdivision review authority.

County zoning governs unincorporated areas of the county only. In general, towns are subject to county zoning ordinance unless the town has its own comprehensive zoning ordinance. The county zoning ordinance is not effective in the town until it has been approved by the town board. All Dane County towns have elected to be under the county zoning ordinance.

Towns are partners in the process to amend county zoning ordinances when necessary. There are two types of amendments to county zoning: map amendments and text amendments. Map amendments change zoning district boundaries and require approval from the county and the town where the land is located. Text amendments change or add provisions within the zoning ordinance, and require approval of the county and a majority of towns. If a town board fails to approve a “comprehensive amendment” of the county zoning ordinance, neither the existing ordinance nor the revisions are in effect in the town.

The map amendment (rezoning) process includes the board of the affected town, the county zoning committee, the county board, and the county executive. Town boards, affected property owners, and certain county officials may petition the county for a zoning map amendment. The affected town board may either approve or disapprove a zoning petition. The county zoning committee may grant or modify the zoning change requested in the petition, or may disapprove the petition. If the town board disapproves a petition, the county zoning committee may not recommend approval unless some modification of the petition is proposed.

The county board may approve the map amendments or text amendments as drafted or as amended. However, if the town board disapproves an amendment, it may not take effect regardless of county board action. If the zoning committee recommends denial of the amendment, the county board may either concur or disagree. The board may also refer the petition back to the committee to incorporate changes. After county board action, the county executive must sign the zoning petition for it to take effect.

In addition to general zoning authority, counties have authority for shoreland, floodplain, and exclusive agricultural zoning.

- Every county must zone shorelands within its unincorporated area (Sec. 59.692 Wis. Stats.). Development setbacks and permits for filling and grading are then enforced within this area. In addition, counties have shoreland-wetland authority, which regulates development in all mapped wetlands.
- Counties, cities and villages must adopt effective floodplain zoning ordinances. These ordinances limit development within mapped floodplains.
- County, municipal, and town zoning ordinances designate certain lands for exclusive agricultural use to allow the owners of the land to claim the farmland preservation credit.

The law places standards which must be met before areas zoned for exclusive agricultural use can be rezoned to another designation.

- Counties may also adopt and enforce construction site erosion control and stormwater management zoning ordinances. Dane County has an erosion control ordinance, but not a stormwater management ordinance.

Plat Review Authority

Chapter 236 provides for the subdivision of land by requiring local approval of plats prior to development. Plat approval authority regulates how land is developed while zoning determines what uses are permitted.

Chapter 236 requires review and approval of a subdivision plat before recording when:

- The division creates 5 or more parcels or building sites of one and a half acres or less in area, or
- Five or more parcels or building sites of one and a half acres or less are created within five years.

Section 236.45 Wis. Stats. provides for counties, cities, and villages to adopt regulations more strict than State Statutes. Under this authority, Dane County reviews subdivisions creating lots 15 acres or less (rather than the one and a half acres cited above.)

If the plat is outside municipal extraterritorial jurisdiction, then the town board and the county zoning committee must grant approval. If the plat is within the extraterritorial jurisdiction of a municipality, then the town board, the municipality (if it has a subdivision ordinance or an official map) and the county zoning committee must grant approval.

A plat must meet the most restrictive standard if county, town, and city or village subdivision ordinances apply. In addition, counties may also exercise “objection authority” for plats within incorporated areas. According to Section 236.12(3) plats cannot be approved until any objection is satisfied.

To be approved, a plat must comply with:

- Chapter 236, Wis. Stats.
- Town, municipal, and county ordinances,
- Local master plans which are consistent with the county plan,
- Department of Commerce rules regarding private sewage systems,
- Department of Transportation rules regarding highway access and preservation,
- Department of Natural Resources conditions on plats near navigable waters, and
- Discretionary conditions specified in governmental reviews.

Division of land into fewer than five lots requires the preparation of a certified survey map (CSM) by a surveyor. Dane County ordinances establish county review authority over CSMs and allow the delegation of the authority to approve CSMs to the County Land Division Review Officer. In addition, towns must approve CSMs. After approval, the CSM is recorded in the office of the Register of Deeds.

Other Resources

Statutory Summary for the State of Wisconsin, American Planning Association, Growing Smart, updated May, 1996.

County and Local Government Land Use Planning and Regulation, James, H. Schneider, UW-Extension: Local Government Center.

prepared by Karin Peterson, Policy Analyst
Office of the County Board



Land Use: The Statutory Authority Of Towns

September 9, 1997

Wisconsin State Statutes (Section 60.61, Wis. Stats.) specify land use responsibilities and authority of town governments. The following is a brief overview of the major responsibilities of town government regarding land use.

Planning Authority and Town Plans

Towns have planning authority in the following two primary situations:

- Park planning by the town park commission;
- Agricultural preservation planning, under the county farmland preservation plan.

In Dane County, the Farmland Preservation Program provided the impetus for development of town land use plans. The history, adoption process, and key components of these plans are described briefly below.

The Dane County Farmland Preservation Plan, adopted by the County Board on December 3, 1981, is a compilation of town land use plans. Most towns prepared their own plans in the late 1970s and in 1980 and 1981, with assistance from Dane County Regional Planning Commission staff. Individual town plans were prepared under the guidance of a planning committee appointed by the town board. After town adoption, plans were adopted by the RPC, reviewed and recommended by the County Agriculture and Zoning Committee (now the ZNR), and adopted by the County Board. Finally, the plan was submitted to the state Department of Agriculture, Trade, and Consumer Protection for review and certified by the Wisconsin Land and Water Conservation Board.

According to Section 91.63, Wis. Stats., revisions to farmland preservation plans follow the same process as adoption of plans. There have been many such revisions to the Dane County Farmland Preservation Plan as towns have revised, refined, and updated their land use plans.

All town plans include a plan map, which illustrates the pattern of land uses that the town believes will meet its overall goals. The map specifies, for each area of the town, the land uses to be encouraged or discouraged, and the criteria by which the future land use changes will be evaluated. The text of the plans include other policies for guiding land use decisions.

The plans generally contain the following five plan districts; although the variety of districts and specific titles vary somewhat on a town by town basis:

1. *Agricultural Preservation Areas*: areas most appropriate for long-term agricultural use;
2. *Rural Non-Farm Areas/Rural Development Areas*: areas most suitable for new nonfarm uses, often residential;

3. *Transition areas*: areas of limited term agricultural use due to the proximity to existing or planned urban development; and
4. *Urban service areas*: areas in and adjacent to existing communities where new high density mixed use development on public sewer and water would be directed;
5. *Resource Protection*: areas with unique natural characteristics worth protecting from all development.

The major tool available to towns to implement their farmland preservation plans is exclusive agricultural zoning. Thirty of Dane County's 34 towns have adopted exclusive agricultural zoning after completing or updating their town plan. This zoning generally limits the uses of land in agricultural preservation areas to agricultural production and dwelling units for the owner and employees of the farm. The County's zoning ordinance requires the ZNR committee to use plans and maps developed by individual towns and approved by the County Board as criteria for zoning recommendations to the County Board. Any nonagricultural land use change is therefore reviewed by the town and the county in terms of consistency with town land use plans which have been incorporated in the County Farmland Preservation Plan.

Town Zoning Authority

Town zoning authority varies on a county-by-county basis depending on whether the county has enacted county zoning and all or some of the towns have adopted the county zoning. General authority includes:

- Town zoning authority when county zoning has not been established;
- Shared zoning authority when county zoning has been established (veto power); and
- Town zoning authority if a town adopts village powers and the county board agrees.

In a county with county zoning, such as Dane County, town zoning authority works in conjunction with county authority. Under State Statutes, a county board may pass a general zoning ordinance including a text and map of zoning districts. This ordinance and map become effective in an individual town if the town board votes approval of the county ordinance text and zoning district map for the town. This has occurred in all 34 towns in Dane County. Through this process, lands in the town come under county zoning and changes to zoning district designations in the town must be approved by the county board. The town board also has an opportunity to approve or disapprove all subsequent text and map amendments proposed to a county zoning ordinance, if such changes affect the town.

Towns may exercise village zoning powers and may adopt their own zoning ordinance, if specifically authorized by the town meeting. However, in counties with a county zoning ordinance, the town zoning ordinance would have to be approved by the county board. No towns in Dane County exercise village zoning powers.

A town board must act on individual petitions for changes in the zoning district designated for a particular parcel within that town, otherwise known as map amendments to the zoning ordinance or "rezonings". The County ZNR Committee does not take action on rezoning requests until the applicable town has completed action on the item. The town board of the affected town may approve or disapprove the petition. If the town disapproves, rezoning

petition cannot become effective unless it is amended, and that amended petition is approved by the towns.

Zoning authority within towns, whether under a county or town zoning ordinance, applies only to unincorporated lands and has no extraterritorial effect on lands in adjacent cities, villages, or towns.

Other Land Use Authority

In addition to planning and zoning authority, towns also have other land use authority, including:

- Subdivision controls: These may be more restrictive than the county ordinance. Some rural towns in Dane County have adopted large minimum lot size ordinances to implement a plan policy of low density development.
- Building permits: Towns have the authority to issue building permits.
- Control of the siting of driveways: The control of the location and grade of driveways opening onto town roads influences the location of homes on building sites.

Other Resources

Land Use Handbook: Guide to Local Land Use Planning and Zoning in Wisconsin, Monroe County and the University of Wisconsin Extension, 1979.

Farmland Preservation Plan, Dane County, Wisconsin: A Part of the Master Plan for Dane County, prepared by the Dane County Regional Planning Commission in cooperation with the Dane County Agricultural, Extension Education, Zoning, Planning and Water Resources Committee. Adopted by the Dane County Board of Supervisors on December 3, 1981. Adopted by the Dane County Regional Planning Commission on October 22, 1981.

County and Local Government Land Use Planning and Regulation, James, H. Schneider, UW-Extension: Local Government Center.

Section 60.61 and 60.62, Wisconsin Statutes.

Chapter 91, Wisconsin Statutes.

prepared by Karin Peterson, Policy Analyst
Office of the County Board



Land Use: The Statutory Authority Of Cities and Villages

September 8, 1997

Wisconsin State Statutes provides cities and villages with broad planning, zoning, and subdivision authority. The following is an brief overview of the major responsibilities of city and village government regarding land use.

Planning

The city council of any city and the village board of any village can, by ordinance, create a plan commission. Section 62.23, Wis. Stats. specifies that the plan commission has the authority to make and adopt a master plan for the physical development of the city, including any areas outside of its boundaries which, in the commission's judgment, bear relationship to the development of the city. Section 61.35, Wis. Stats. provides the same authority for villages.

Master plans generally include the following key elements:

- A series of policy statements regarding community problems and opportunities;
- A land use plan;
- Utility plans;
- Transportation and traffic plans; and
- Open space or recreation plans.

City and village plan commissions may adopt a master plan as a whole or by parts as work on the plan progresses. The majority of the members of the commission must adopt the plan. While city council or village board approval is not required, it is often sought by the plan commission. Many cities and villages refine their master plans to guide development or redevelopment of specific districts or neighborhoods, or in special functional areas such as historic protection or urban design.

Zoning

Cities and villages have broad authority to enact comprehensive zoning ordinances. The city or village must be able to show that zoning is applied in accord with a thoughtful design for zoning the municipality. Municipalities may adopt and administer zoning within the city or village limits without the consent of any other unit of government. Cities and villages use this grant of zoning authority to accomplish such activities as regulating use of districts, urban design review, historic preservation, site plan review, and sign regulation.

A city or village with a plan commission and a zoning ordinance may also exercise extraterritorial zoning in town areas beyond municipal limits. Extraterritorial zoning is

general zoning that affects town land around the borders of a city or village. The extraterritorial zoning jurisdiction of a first, second or third class city extends to town territory three miles beyond the city's corporate limits. The jurisdiction of a fourth class city or village extends one and a half miles beyond city limits. In Dane County, only the cities of Madison, Middleton, and Sun Prairie have three mile extraterritorial jurisdiction.

The process of enacting extraterritorial zoning includes members of the affected town government. A joint extraterritorial zoning committee of three municipal plan commissioners and three town members prepare plans and regulations for the area. After committee approval of the plan, the city or village must approve the plan. Zoning for the area is then administered by the city or the village. There are currently three areas in Dane County with extraterritorial zoning in effect: the Town of Windsor and Sun Prairie; the Town of Vienna and DeForest; and the Town of Westport and Waunakee.

Municipalities also have authority to enact an interim zoning ordinance freezing existing zoning or existing uses while the comprehensive zoning plans is being prepared. This action can be taken without consent of the affected town government. However, without consent of the town, the freeze can only exist for one year.

Other Authorities

Cities and villages also have other authority to influence land use. Briefly, these include:

- Subdivision regulations: Cities and villages regulate the development of subdivisions within their corporate limits in much the same way county government oversees subdivision development in unincorporated areas. Many cities and villages also exercise review of land divisions (divisions of four or fewer lots) in unincorporated areas that are within their extraterritorial jurisdiction.
- Environmental regulations: Cities and villages are require or authorized to adopt regulations for wetland protection, floodplain protection, stormwater management, and erosion control.
- Official mapping: Cities and villages affect development and use of land by mapping planned streets, services, and utilities. Development may not occur in areas which have been officially mapped.

Other Resources

Land Use Handbook: Guide to Local Land Use Planning and Zoning in Wisconsin, Monroe County and the University of Wisconsin Extension, 1979.

County and Local Government Land Use Planning and Regulation, James, H. Schneider, UW-Extension: Local Government Center.

Section 61.35 and 62.23, Wisconsin Statutes. prepared by Karin Peterson, Policy Analyst
Office of the County Board



The Dane County Regional Planning Commission: Role and Authority

August 10, 1997

The Dane County Regional Planning Commission (RPC) was formed in 1968 through an intergovernmental agreement between Dane County and the County's local units of government. The RPC, therefore, is not a county agency, but an independent agency created by state statute and by agreement of Dane County communities. The RPC was originally established to carry out comprehensive, intergovernmental planning; to have jurisdiction throughout Dane County, including incorporated and unincorporated areas; to meet areawide requirements so local jurisdictions could receive federal grants; and to provide an organization to receive federal planning grants.

The Commission consists of 11 people who represent the interests of the County, towns, villages, and cities. Under the agreement establishing the RPC, at least five of the 11 commissioners must be County Board supervisors. In addition, two are selected by the Mayor of Madison, one represents third and fourth class cities, one represents villages, and two represent the towns. A staff of 19, with a 1997 budget of almost \$1.3 million, serves the Commission.

Section 66.945 of the Wisconsin Statutes governs the activities of the RPC. While the RPC's planning authority is advisory and does not carry regulatory force, it does play a major role in the distribution of federal transportation dollars and the revision and approval of urban service areas.

The State Statutes require the RPC to perform three major functions:

1. Make and adopt a master plan for the physical development of the region.
2. If requested by a local unit, report recommendations to that local unit on the location of or acquisition of land for any of the items or facilities which are included in the adopted regional master plan.
3. Make an annual report of its activities to the legislative bodies of the local governmental units within the region.

The RPC is also authorized to perform several other functions and chooses to perform additional activities under federal and state contracts and agreements. In fact, such functions as transportation planning and programming and water quality planning make up a major portion of the RPC's work.

The following description of the RPC's anticipated primary functions for 1997 is not meant to be exhaustive, but rather provide an overview of the nature of the RPC's work. The description of general tasks follows the RPC's staff's organizational structure of three main divisions: regional and community development, environmental and natural resources, and

transportation. In carrying out these planning functions, the RPC works with many units of government, including the County, towns, villages, cities, as well as state and federal government.

Regional and Community Development:

The work of the Regional and Community Development Division includes development and implementation of the transportation and land use plan, county planning and assistance, local planning assistance, and work to maintain basic data programs.

Dane County Land Use and Transportation Plan: This plan was developed through the Vision 2020 process and will be the basic areawide planning document for the Regional Planning Commission. Over the next year the RPC will work to implement this plan.

County Planning Assistance: The RPC staff provides comments to the County Zoning and Natural Resources Committee on all zoning change petitions and conditional use applications and amendments. Staff review the consistency of zoning petitions with town plans which have been adopted by Dane County. The RPC's assistance to County government is provided for under an annual services contract between the RPC and Dane County.

Local Planning Assistance: The goal of the RPC's work in local planning assistance is to assist local units of government (towns, cities, and villages) in meeting local objectives which also help implement regional plans and programs. The RPC did considerable work writing the initial town plans in the 1970s and 1980s under the farmland preservation planning program, and now works with some towns in updating these plans.

The RPC also provides specific planning assistance to villages and cities under contract. In recent years the RPC has developed both zoning ordinances and comprehensive plans for cities and villages.

Basic Data Programs: The RPC maintains land use inventories and maps, and evaluates and distributes census and economic data.

Environmental and Natural Resources:

The work conducted by the Environmental and Natural Resources Division focuses on water resources management planning. The RPC is designated by the state Department of Natural Resources (DNR) as the water quality management planning agency for the County. The division also offers limited technical assistance to local governments in the area of solid waste management and conducts special studies in air quality planning, energy management planning, and environmental impact reviews.

Wastewater Systems Planning and Service: The RPC provides general assistance, data, and population and flow forecasts for the Madison Metropolitan Sewerage District (MMSD) and other agencies engaged in facilities planning or special wastewater studies. MMSD has a statutory relationship with the RPC which requires MMSD plans be consistent with RPC plans. The RPC also reviews an estimated 150

sanitary sewer main extensions each year for consistency with plans and urban service areas. State agencies approving sewer extensions require a letter from the RPC indicating consistency with the Water Quality Plan.

Urban Service Area and Environmental Corridor Delineation: As the designated water quality agency, the RPC develops the Water Quality Plan for Dane County. This plan is submitted to DNR for approval. As part of this plan, communities designate urban service areas (USAs), the area in which municipalities can provide services, including but not only sanitary sewer. If a sewer extension is within the current USA, then the process for approval is pro forma. If not, then the community must seek expansion of the USA. This process involves notification of adjacent local governments, a hearing before the RPC, a report, action by the RPC, and DNR approval.

Urban and Rural Nonpoint Pollution Source Management: The RPC assists municipalities and the County in developing and implementing watershed plans in priority watersheds. Staff also provide assistance to communities implementing urban nonpoint source recommendations in the Dane County Water Quality Plan.

Transportation Planning:

The RPC plays an important role in transportation planning in the County. The RPC is the federally-designated areawide transportation planning policy body, called the metropolitan planning organization (MPO), for the Madison urbanizing area. This area contains two-thirds of the population of the County and 15 units of government.

In its role as the MPO, the RPC develops two main documents: the Long Range Transportation Plan and the Transportation Improvement Program (TIP). The Long Range Transportation Plan, which is updated every five years, must include all projects for which the RPC anticipates requests for federal funding in subsequent TIPs. The Dane County Land Use and Transportation Plan will serve as the Long Range Transportation Plan and addresses transportation issues throughout Dane County.

The U.S. Department of Transportation requires the development and annual endorsement of the TIP, which is a comprehensive listing of transportation improvement projects proposed to be implemented over the next five years. The TIP focuses on projects within the Madison urban area, but includes a listing of outer County projects for information purposes. No project can be listed in the TIP unless it is first in the Long Range Transportation Plan. The federal government provides between \$3 and \$4 million each year for the MPO for major transportation projects. Projects must be listed in the TIP to be eligible for federal funding.

The RPC conducts transportation planning activities in addition to the Long Range Transportation Plan and the TIP including:

- Transit planning in the Madison area,
- Serve as the clearinghouse for project notification and review under the Wisconsin Federal Grant Development and Review Process,
- Assistance with the commuter rail feasibility study,
- Calibration of the forecasting model, TRANPLAN,
- Bikeway and ridesharing planning,

- Development of the Transportation System Management Plan elements,
- Assistance with the Elderly/Disabled/ADA plan, and
- Development of corridor studies.

Other Resources:

Section 66.945, Wis. Stats. “Creation, organization, powers and duties of regional planning commissions”.

Profile: Wisconsin’s Regional Planning Commissions, prepared by the Wisconsin Council of Regional Planning Organizations, December 1992.

Dane County Regional Planning Commission: A Profile in Brief, prepared by the Dane County Regional Planning Commission, May, 1994.

prepared by Karin Peterson, Policy Analyst
Office of the County Board



The Zoning Board of Adjustment

September 9, 1997

The Zoning Board of Adjustment (BOA) is the zoning appeals body of a county. Section 59.694, Wis. Stats. authorizes the BOA to hear appeals and make decisions in matters relating to county zoning, shoreland, and floodplain ordinances.

In Dane County, the BOA consists of five members, appointed by the County Executive and approved by the County Board. Each member serves for a term of three years. Members of the BOA must reside in unincorporated areas of the county and no two members may be from the same town. The Dane County BOA meets once a month.

The BOA is a quasi-judicial body, meaning that in many ways it functions like a court. State Statutes provide the BOA with the authority to rule on administrative appeals, applications for variances, and, if granted the authority by local ordinance, applications for conditional use permits. In Dane County, the Zoning and Natural Resources Committee, not the BOA, rules on conditional use permits.

Specific powers of the BOA in Dane County include:

- Hearing and deciding requests for special exceptions. In Dane County, the BOA decides special exception permits for property owners to do filling, grading, or earth disturbing activity within 300 feet of any navigable body of water to ensure that such activities will not have negative effects on erosion or water quality.
- Granting variances to the terms of the zoning ordinance. When special conditions of a property won't allow a property owner to meet the dimensional standards of the ordinance, the property owner may request a variance. To be granted a variance, the property owner must show unnecessary hardship caused by the ordinance, and the variance must be consistent with the public interest and the spirit of the ordinance.
- Hearing and deciding appeals of administrative decisions. When the zoning administrator makes an interpretation of the zoning ordinance or other administrative decision, those affected by the decision (be they property owners, neighbors, or others) have the right to appeal the decision to the BOA.

The BOA may reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination before them. BOA decisions require a majority vote of the board. Unlike decisions for rezoning land, towns have no legal role in acting on matters heard by the BOA. However, common practice is to seek town input on matters before the BOA.

An appeal that is denied by the BOA cannot be resubmitted for a period of one year from the date of the denial, unless new evidence or proof of change of conditions are found to be valid by the board. The one year waiting period does not apply to requests for special exception permits. Decisions of the BOA may be appealed to circuit court.

Other Resources

County Zoning Board of Adjustment Handbook, prepared for the Wisconsin Department of Natural Resources by Jean Setterholm and Gary Heinrichs, 1993.

Section 59.694, Wis. Stats.

Section 10.26, Dane County Code of Ordinances

prepared by Karin Peterson, Policy Analyst
Office of the County Board



Overview of the Authority of Boards and Committees

September 5, 1997

In addition to activities of the County Board and its Zoning and Natural Resources Committee, which have both specific statutory duties as well as responsibilities delegated by county ordinance, there are several county commissions and boards which have limited and specialized roles in land use issues. In most cases, these entities do not have direct authority in zoning matters. (The County Board of Adjustment is addressed in a separate fact sheet.)

Land Conservation Committee

State Statutes (sec. 92.07, Wis. Stats.) require each county to have a Land Conservation Committee, which shall coordinate “all matters relating to agriculture and soil and water use and conservation in the county.” The Dane County Land Conservation Committee oversees the work of the Land Conservation Department. The Committee and Department concern themselves largely with administering programs for erosion control and non-point source water pollution. Funds are made available to farmers to assist in developing plans for soil and water conservation.

In addition, in Dane County the Land Conservation Department plays a significant role in administration of the erosion control ordinance. For many construction and other earth-disturbing activities in the unincorporated area, the applicant must prepare an erosion control plan before construction can begin. The Land Conservation Department and Zoning Administrator cooperate in the review of such plans, although the applicants are responsible for developing them.

Solid Waste and Recycling Advisory Commission

The commission is authorized under county ordinances to provide recommendations to the county board on a variety of issues related to landfills, recycling and solid waste management.

Environmental Council

The council is authorized under county ordinances to advise the county and other groups on environmental matters and the protection or natural areas, and to promote awareness, conservation and preservation of the County’s natural resources

Lakes and Watershed Commission

The Dane County Lakes and Watershed Commission was created by state statute to provide leadership and coordination in management, maintenance and improvement of all of the county's water resources. It also has the responsibility for developing an implementation plan providing for minimum standards and plans for a wide variety of water resource protection issues. For example, although it does not administer the shoreland zoning ordinance, the commission developed minimum standards included in the ordinance. The commission also concerns itself with recreational water use issues and development and implementation of priority watershed plans.

Parks Commission

The Parks Commission manages the county park and open space system, in conjunction with the County Parks Department. In that role, the commission oversees the county's Parks and Open Space Plan, and acquires property to further the goals of that plan.

Prepared by:
Tim Saterfield
Legislative Services Director
Office of the County Board
September, 1997

Zoning Process



Residential Density Standards in Agricultural Preservation Areas

September 11, 1997

Residential development in many unincorporated areas in Dane County is limited by residential density standards. These standards are included within town land use plans, which in turn are incorporated in the county's farmland preservation plan. These plans designate "agricultural preservation areas" - land that is then generally zoned A-1 Exclusive Agricultural - where new residential development is generally limited to one house lot (or "split") per 35 acres of undeveloped land owned at the time the town adopted this zoning. These house lots are typically created by rezoning a portion of land zoned A-1 Exclusive to another zoning district.

The density standard was originally derived, in most cases, from the state's Farmland Preservation Program statute, which provides that tax credits may only be received by owners of parcels 35 acres or larger (in addition to a number of other requirements). At the time of the initial adoption of A-1 Exclusive zoning - generally in the late 1970's or early 1980's - most town governments in Dane County adopted the residential density standard of one unit per thirty-five acres because of its use in the state programs.

Despite this linkage to the Farmland Preservation Program, the density standard is not a thirty-five acre minimum lot size, but rather a ratio of the number of allowable lots that can be derived from the amount of land owned. Therefore, an owner of 140 acres could create 4 lots of 2 acres in size, based on the ratio of one lot per thirty five acres owned, but could also create 4 lots of 35 acres in size. In most cases, a rezoning is required to exercise this density policy. The application of the standard to individual parcels of land varies based upon the number of acres owned and any previous land divisions occurring since the town adopted A-1 Exclusive zoning.

It is also important to note that the density standard can vary from town to town in Dane County. Town plans also vary in how they treat parcels of less than 35 acres, whether they consider farm houses in the density computation, and whether they "round up" in calculating allowable house lots.

Density standards are set by towns in their preparation of land use plans; these standards become county policy as well when such plans are approved by the county board as components of the farmland preservation plan. The application of the density standards to individual parcels in zoning petitions may become an issue for the Zoning and Natural Resources Committee and the County Board.

Prepared by:
Tim Saterfield
Legislative Services Director
Office of the County Board
September, 1997



The County Role in the Regulation of Land Divisions

September 10, 1997

Lots can be created, and land can be developed, in cities, villages or towns through the subdivision platting process, as well as by certified survey maps. Subdivisions provide for the division of land into separate parcels for development. In Dane County, a subdivision is the creation of 5 or more parcels or building sites of 15 acres each or less. Subdivisions are created by recording with the Register of Deeds an approved “plat”, or map, of the subdivision. Another method of creating lots is through a certified survey map (CSM), which is used to create four or fewer lots. The certified survey map process is actually a more common method of creating lots in unincorporated areas.

The approval of subdivisions is carried out through a complex approval process that can involve the state, the county, and the local municipality (city, village and/or town). The County has primary authority to approve subdivisions in unincorporated areas, and towns also review subdivision plats. In Dane County, the Zoning and Natural Resources Committee is vested with the county’s approval authority. While it does not have authority to approve subdivisions in cities and villages, the county, through the Zoning and Natural Resources Committee, has the statutory authority to object to subdivisions in municipalities. Any objection must be satisfied before that plat can be approved. Cities and villages, on the other hand, have the authority to exercise approval for subdivisions in unincorporated areas which are within their extraterritorial plat approval jurisdiction - typically three miles for a large city and one and one half miles for a fourth class city or village.

In unincorporated areas of Dane County, subdivisions must comply with both the state statutes (Ch. 236, Wis. Stats.) and the county’s subdivision ordinance (ch. 75, Dane County Code of Ordinances), as well as any town subdivision ordinance and municipal ordinances if within their extraterritorial jurisdiction. The most restrictive provisions are applicable to any particular division where conflicts among ordinances exist. The Zoning and Natural Resources Committee exercises approval over subdivision plats, and, unless a zoning change is also sought, subdivisions do not need approval from the full County Board. If land is not already zoned appropriately for the use desired within a proposed subdivision, county approval of a rezoning request is first required.

State Statutes Governing Land Divisions

Chapter 236 of the Wisconsin statutes provides the framework for the creation and approval of plats. The statutes establish a process for review and approval of plats, and minimum standards for the size and layout of subdivisions. Plats must be completed by a registered land surveyor, and the statutes include detailed provisions for the conduct of the platting

process. Depending upon the location of the parcel, the state departments of Commerce, Transportation, and Natural Resources may be required to review and approve the plat.

County Land Division and Subdivision Ordinance

Chapter 75 of the Dane County Code of Ordinances is the Subdivision Ordinance, which is adopted under the authority granted by the state statutes. The ordinance is administered by the Department of Planning and Development and the Zoning and Natural Resources Committee. The ordinance includes a variety of requirements for subdivisions, including the dedication of land for parks or recreation areas, protection against development in floodplains, submission of a development plan for the overall area, and design standards for streets. Committee approval is dependent upon compliance with the standards outlined in state statutes and county ordinance.

Prepared by:
Tim Saterfield
Legislative Services Director
Office of the County Board

September, 1997



Dane County Zoning Districts

September 8, 1997

Zoning districts are classifications established by a zoning ordinance and which appears on the map which is part of the zoning ordinance. The district which covers any given parcel of land defines what uses are permitted on that land. The zoning ordinance may prescribe a number of districts, such as agricultural, residential, commercial, or industrial, and fix rules for each district. A zoning ordinance also controls the placement, height, bulk, and coverage of structures within each of the districts.

Section 59.69(4), Wis. Stats. provides counties with authority for establishment of zoning districts. The Dane County Code of Ordinances (Chapter 10) includes the various zoning districts applicable in Dane County as well as rules governing uses within those districts. There are four main classifications of districts:

- Agricultural,
- Residential,
- Commercial,
- Industrial,

Within each of these classifications are subcategories. For instance, there are multiple residential districts in Dane County, each with specific uses and regulations.

The Dane County Department of Planning and Development has developed two matrices, found on the following two pages, which describe general requirements of each type of district. The first matrix provides an overview of the type of uses allowed in each district. The second matrix delineates requirements for residential lot widths and areas. These are intended as general guides only.

Other Resources

Handbook for Planning Commissioners in Missouri, written by Robert C. Simonds, 1992.

Section 59.69(4), Wis. Stats.

Chapter 10, Dane County Code of Ordinances

prepared by Karin Peterson, Policy Analyst Office of the County Board

Zoning Districts

Dane County Department of Planning and Development. Draft 9/15/97

M		C					R				A			
INDUSTRIAL		COMMERCIAL					RESIDENTIAL				AGRICULTURAL			
M-1	C-2	C-1	B-1	LC-1	AB	R-3 A, R-4	R-1, R-2, R-3	RH	A-2	A-1EX	A-1			
Allows Heavy Industry (in addn to C-2 type uses)	Heavy	Light	Local bus.	Limited	Ag. Bus.	Multifamily	Single Family	Rural Homes	< 35 Ac.	Ag. Exclusive	(instead A1-Ex)			
	Allows Vehicle sales, service, repairs	Allows Assembly Light manufacturing	Allows retail & service businesses.	Only Contractor & school bus & motor coach businesses	Only Agric. business	R-3 A duplexes & single family	R-1 Standard lot size & yard	One single family home per parcel	One single family home per parcel	Except: Bristol Burke Middleton Springdale	Parcels > 5 Ac. No limit on livestock			
	Contractor related uses	(in addn to B-1 type uses)		Homes for operators		R-4 condos townhouses apartments (3 or more dwelling units) & duplex & single family	R-2 Smaller lot size & yard	Ag. uses including: One animal unit per acre	Ag. uses including: No livestock under 2 Ac. One animal unit per acre on 3-16 acres	Farms > 35 Ac. in most cases	One single family home per parcel	Parcels < 5 Ac. res'l uses only (no livestock)		
	Outdoor sales & display						R-3 Smallest lot size & yard	Divided by size:	No limit on livestock	Homes for Farmers only				
	Warehouse & mini-warehouses						RH-1 > 2 Ac. RH-2 > 4 Ac. RH-3 > 8 Ac. RH-4 > 16 Ac.		A-2(1) 1-2 Ac. A-2(2) > 2 Ac. A-2(8) > 8 Ac. A-2 > 16 Ac.					
	(in addn to C-1 uses)													

OTHER		
CO-1	RE-1	EXP-1
Conservancy/Recreational		Expo
		Only expo

Note: Because there are too many specific uses and regulations to show here, we urge you to contact Dane County Zoning for more information (608) 266-4266

Dane County Zoning Ordinance. Requirements for Residential lot widths and areas

Department of Planning and Development Draft 9/15/97

	DISTRICTS	Minimum Lot Widths & Areas						Lot Coverage and Yard		
		Unsewered		Sewered		Lot Coverage	side yard	rear yard		
		width	area	width	area					
AGRICULTURAL <i>Single family residential uses only</i>	A1-EX		35 Ac (w/ subst. farm income)		35 Ac (w/ subst. farm income)	N/A	25 Ft tot. (>10 Ft each)	50 Ft		
	A1	100 Ft	20,000 Sq Ft	100 Ft	15,000 Sq Ft	N/A	same	50 Ft		
	A2	100 Ft	A-2(1) 1 Ac A-2 (2) 2 Ac A-2 (4) 4 Ac A-2 (8) 8 Ac A-2 16 Ac	100 Ft	same as unsewered	N/A	same	50 Ft		
RESIDENTIAL <i>Single family residential uses only</i>	R-1	100 Ft	20,000 Sq Ft	100 Ft	15,000 Sq Ft	30% (35% corner)	25 Ft tot. (>10 Ft each)	50 Ft		
	R-1A	100 Ft	1 Ac	100 Ft	1 Ac	20% (25% corner)	same	50 Ft		
	R-2	100 Ft	20,000 Sq Ft	75 Ft	10,000 Sq Ft	35% (40% corner)	10 Ft	35 Ft		
	R-3	100 Ft	20,000 Sq Ft	60 Ft	8,000 Sq Ft	35% (40% corner)	10 Ft	25 Ft		
RESIDENTIAL	R-3A	10.07 - R-3A	100 Ft	20,000 Sq Ft	60 Ft	8,000 Sq Ft	30% (35% corner)	10 Ft	25 Ft	
		Duplex	100 Ft	20,000 Sq Ft	75 Ft	10,000 Sq Ft	same	10 Ft	35 Ft	
		Single Fam same							
Multifamily	R-4	10.08 - R-4	100 Ft	20,000 Sq Ft*	60 Ft	8,000 Sq Ft *	same	10 Ft	25 Ft	
		Duplex same							
		Multifamily same							
RESIDENTIAL	RH-(1,2,3,4) "farmette"	10.09 to 10.093 - RH RURAL HOMES	150 Ft	2 Ac 4 Ac 8 Ac 16 Ac	150 Ft	same as unsewered	25 Ft tot. (>10 Ft each)	50 Ft		

*R-4, Multifamily: In addition to the min. area of the lot, a min. lot area is required per dwelling unit.
 **R-4, Multifamily: Side and rear yards for buildings > 2 stories tall are greater.

Please contact Dane County Zoning for answers to specific questions. (608) 266-4266



The Processes for Zoning, Rezoning, Conditional Use Permits, and Land Division in Dane County

April 6, 1998

The County shares authority with town government to review and approve construction of buildings and development of lands in unincorporated areas. The County's processes for changing the use of land are through the approval of zoning permits, rezonings, conditional use permits, and land divisions. Each is described below.

Overview of the Zoning and Plat Review Division's Responsibilities

The Zoning and Plat Review Division of the Department of Planning and Development is responsible for administering the County zoning and land division ordinances for unincorporated areas. The County Zoning and Natural Resources Committee, County Board, and County Executive have approval authority under these ordinances and state law. The Division administers the following Dane County Ordinances:

- Chapter 10: Zoning Ordinance
- Chapter 11: Shoreland, Shoreland-Wetland and Inland-Wetland Regulations
- Chapter 14: Manure Storage and Erosion Control System
- Chapter 75: Land Division and Subdivision Regulations.

Zoning Permits

Zoning permits ensure that projects ranging from new construction to home additions are in compliance with the various requirements of the zoning ordinance (e.g. permitted use, building heights, setbacks). Zoning permits are issued by staff of the Zoning and Plat Review Division and do not require town board or County Board action. Towns issue building permits for many of the same types of projects to ensure compliance with local and state building, plumbing, and electrical codes. A zoning permit is required for:

- Construction of a new building
- Modifications or additions to a building
- Major building repairs
- Cleaning of a drainage ditch or pond
- Cutting brush or trees
- Filling or grading in a floodplain, wetland, or shoreland area.

Staff inspect projects during construction and after completion of projects and issue certificates of compliance. The division processes about 1,500 zoning permits a year.

Rezoning Process

Land in Dane County is categorized into various districts. Zoning districts are classifications established by a zoning ordinance and which appears on the map which is part of the zoning ordinance. The district which covers any given parcel of land defines what uses are permitted on that land. The zoning ordinance may prescribe a number of districts, such as agricultural, residential, commercial, or industrial, and fix rules for each district. A rezoning involves changing that map.

Rezoning is necessary if development or construction plans do not meet the requirements of the property's current zoning district. For example, an individual with a home on property that is zoned R-1, single family residential, may want to modify the home to make it a duplex. This would require a zoning change to R-3A, a residential zoning district which allows duplexes as a permitted use.

Rezoning property to an appropriate district requires action by both town and county government in a complicated process. Requests for rezones that face no opposition or raise no significant issues on either the town or county levels take the following steps:

- Individuals seeking a zoning change often confer with zoning staff prior to submission of an application. Zoning staff advise potential applicants to speak with town officials before submitting a formal application. An individual then submits an application to the County's Zoning and Plat Review Division, which is then forwarded to their town government.
- Once an application for rezoning is submitted, the Zoning and Natural Resources (ZNR) Committee holds a public hearing on the petition.
- The affected town board approves the rezone. This may occur before or after the ZNR public hearing, depending on the town's meeting schedule.
- The ZNR waits for town board action prior to recommending approval to the full County Board. If the town board approves the rezoning request before the ZNR public hearing, the ZNR Committee may provide "fast track" approval of the request at the public hearing. The ZNR may recommend amendments to the request. For example, a deed restriction limiting potential future uses could be required as a condition of the approval.
- The County Board then approves the change and the County Executive signs the ordinance effecting the rezoning.

If the rezoning is approved, then a legal notice is published by the County Clerk and the amendment becomes effective, unless there is a delayed effective date. A delayed effective date requires recording with the Register of Deeds any certified survey map for land division or any deed restrictions which were required as a condition of rezoning approval. If an applicant does not comply with time specifications, then the rezone is null and void.

There are many points in the rezoning process where a petition may be amended or fail. For example, if the town board disapproves of the rezone, then the ZNR's only options are to

deny or to recommend County Board approval with amendments. If a request is amended by ZNR and ultimately approved by the County Board and County Executive as amended, then the town has another opportunity to review the amended permit and approve or deny it. If either the town board, County Board, or County Executive disapprove of the request, it fails.

Conditional Use Permits

A conditional use is a use allowed in a particular zoning ordinance provided certain pre-specified standards are met and a conditional use permit is granted. Specific conditions may be added to approval of a conditional use permit (CUP) to ensure these standards will be met.

Issuance of a CUP requires approval by the ZNR Committee. It is the Committee's policy not to take action on any CUP request until the affected town has made a recommendation on that request.

If an individual wants to use property in a manner that is a conditional use under its current zoning district, then he or she would apply for a CUP with Dane County Zoning and Plat Review Division. The town board reviews the request and recommends approval, approval with conditions, or denial. The ZNR holds a public hearing and, after considering the recommendation of the town board, acts on the CUP. Unless the ZNR decision is appealed, the CUP becomes effective upon ZNR action and the applicant may commence the conditional use subject to any conditions and other permit requirements. A ZNR decision on a CUP can be appealed to the County Board, where a three quarters vote is required to reverse or modify the ZNR's decision.

Occasionally, an applicant's proposed use will require both a rezoning and a conditional use permit. When this is the case, both the rezoning and CUP process must be concluded in order, except that ZNR holds a single public hearing on both requests.

Land Division

In addition to rezoning, many proposals to build or change the use of land are also accompanied by the legal division of land. Land division approval is required of a property owner who wants to divide one or more lots from his or her property, with any lot sized 15 acres or fewer. Divisions of fewer than five lots requires approval of a certified survey map (CSM), while divisions of five or more lots require approval of a subdivision plat.

The County Land Division Review Officer has the authority to approve CSMs for the County. The CSM approval process involves transmittal of the land division proposal to all appropriate parties, including the town board, utility companies, and other County departments, such as the County Highway Department. Towns also have the authority to approve CSMs within their towns, as do nearby cities or villages if the land lies within their extraterritorial jurisdiction.

Approximately 70 percent of rezone applications also involve the division of land. If the CSM is a requirement of a rezone, then through the "delayed effective date" process, an approved CSM must be filed with the Register of Deeds within 90 days of County Board approval of the zoning change. If the applicant fails to comply with this process, then the zoning change is not valid.

While approval of a CSM is largely an administrative process, subdivision plats must be approved by the County's ZNR Committee. An individual interested in subdividing property must first file a preliminary plat for approval. Within 90 days of submittal of the preliminary plat, the ZNR will approve, approve with conditions, or reject the plat. If the preliminary plat is approved, then the subdivider may submit a final plat, which follows the same approval process. Final plats must be consistent with the preliminary plat, with greater detail provided, and must satisfy any conditions of preliminary plat approval. Subdivision plats are also subject to approval by the affected town and city or village with extraterritorial review jurisdiction.

Prepared by Karin Peterson, County Board Office

Planning



Farmland Preservation Planning and Town Land Use Planning in Dane County

February 4, 1998

Under the Wisconsin Farmland Preservation Program, the state provides income tax credits to farm owners who keep their property in agricultural use. The law allows the income tax credit for landowners in counties with Farmland Preservation Plans and who have land which is zoned for exclusive agricultural use. The following is a brief overview of how the Farmland Preservation Program lead to the preparation of town plans, as well as a description of the current process for updating plans.

The Farmland Preservation Law, Chapter 91, Wis. Stats., became effective on October 1, 1977. The law, which created the Farmland Preservation Program, is administered by the Department of Agriculture, Trade, and Consumer Protection (DATCP). DATCP makes recommendations to the State Land and Water Conservation Board, which is responsible for certifying county plans prepared under the program. The Department of Revenue also plays a role in the implementation of the Farmland Preservation Program, administering the tax credit to land owners.

State law grants counties the authority to develop farmland preservation plans, and counties have generally chosen to share this responsibility with towns. Towns, in fact, have no authority under the Farmland Preservation Law to adopt their own farmland preservation plans. However, in Dane County, as in others, the County decided planning should be a responsibility of the towns, with County approval.

The Dane County Farmland Preservation Plan, adopted by the County Board on December 3, 1981, is largely a compilation of town land use plans. After town adoption, plans were adopted by the RPC, reviewed and recommended by the County Agriculture and Zoning Committee (now the Zoning and Natural Resources Committee), and adopted by the County Board. Finally, the plan was submitted to the state DATCP for review and certification by the Wisconsin Land and Water Conservation Board.

In addition to the specific town plans, the Dane County Farmland Preservation Plan also includes descriptive information and policy statements. The Plan includes information about Dane County's agricultural land use and economy. The following policy statements are part of the Plan:

- Maintain Dane County as one of the nation's most productive agricultural counties.
- Preserve agricultural land as a resource for current and future generations.
- Support preservation of the family farm.
- Maintain the rural character of Dane County towns.

The Dane County Farmland Preservation Plan also makes recommendations for plan districts and implementation tools. Finally, the process for making changes to town plans is detailed in the County's plan.

Most towns in Dane County prepared land use plans between 1979 to 1981, with assistance from Dane County Regional Planning Commission staff. These town plans were incorporated into the County Farmland Preservation Plan, which is required to be prepared under the program. Town plans generally include descriptions of existing conditions, goals and objectives, and a map illustrating the pattern of land uses that the town believes will meet its overall goals. The map specifies preservation and development areas as required by the program. In addition, town plans generally include policies for approving rezonings and land divisions.

The County Farmland Preservation Plan is required to contain “ a program of specific public actions designed to preserve agricultural lands and guide urban growth.” One major tool available to towns to implement their land use plans is exclusive agricultural zoning. Thirty of Dane County's 34 towns have adopted exclusive agricultural zoning after preparing or updating their town plan. This zoning generally limits the uses of land in agricultural areas to agricultural production and dwelling units for the owner and employees of the farm. Any land use change to a nonagricultural use (eg. homes) is therefore reviewed as a rezoning request by the town and the County for consistency with the town's plan.

Towns periodically amend and update their land use plans. If changes to a town plan are approved by the County Board, they are also amendments to the County Farmland Preservation Plan and are used by the County Zoning and Natural Resources Committee as criteria for zoning recommendations.

According to Section 91.63, Wis. Stats., revisions to farmland preservation plans follow the same process as adoption of the original plans. In Dane County, this involves review and approval by the town, the RPC, the County, DATCP, and the Land and Water Conservation Board. The attached chart, developed by the Dane County Planning and Development Department, shows the major steps in the plan review process.

Other Resources

Farmland Preservation Plan, Dane County, Wisconsin. Adopted by the Dane County Board of Supervisors on December 3, 1981.

Chapter 91, Wisconsin Statutes.

prepared by Karin Peterson, Dane County Board Office and
Mark Roffers, Dane County Department of Planning and Development

Agriculture and the Land



Farmers' Perspectives on Land Use

March 30, 1998

Land use decisions are particularly important to the farmers of Dane County because many such decisions affect rural, agricultural land both directly and indirectly. A roundtable discussion with a group of nine Dane County farmers, representing various types and sizes of farming, generated several themes which reflect farmers' perspectives on land use. Obviously, farmers as an occupational group hold no single perspective on land use issues, but rather express a range of opinions and concerns.

Ability to use equity in farm land for retirement or investment

Some farmers believe it is important that they be able to sell some of their land for development, if necessary, for retirement income. Generally, over their careers, farmers reinvest in their farms and have most of their equity tied up in land, buildings, and equipment. Few have any type of retirement savings. Selling some portion of the farm for development is a way for farmers to cash out some of the equity they have in the farm. There is a concern that overly-restrictive land use policies may limit the ability of farmers to sell some or all of their land.

Transfer of development rights (TDR) and purchase of development rights (PDR) have been suggested as methods to provide income for farmers by allowing the sale of development rights to farm land, rather than dividing off lots from the farm for development. After such a sale, there would be a deed restriction preventing further development of that land. With TDR, the right to develop is then transferred to another geographic area to which growth is directed. With PDR, the right to develop one's property is purchased by a governmental unit or non-profit agency.

TDR appeals to some farmers who see it as a way to liquidate some of the value of their farm, either for further investment or as a type of retirement fund. They wonder, however, whether TDR will provide sufficient funds to prompt farmer participation in the program. Some believe the value of the development right would need to be \$500 to \$1,000 per acre to make it worthwhile. Further, some believe there would need to be a waiting period to allow farmers to back out of a development rights sale if their neighbors choose not to participate and develop their land instead.

Farmers are particularly concerned, however, with the intergenerational ramifications of TDR. Many believe that some of the development potential of the land should be available to the next generation.

Preservation of farm land and viability of farm operations

Farmers are concerned with the impact of development in agricultural areas on the viability and profitability of farming. Like other business owners, farmers often make investment decisions, and need to have some certainty that their farm land will continue to be viable for farming in the future. Increasing development in Dane County can make it difficult for some farmers to make large investment decisions.

Increasing residential development in rural areas not only takes farm land out of production, but it can restrict the ability of individual farmers to increase the size of their farms. This can be of particular concern in light of the changing economies of farming and the need to compete with producers worldwide. As agricultural methods improve, the ability to increase production (e.g. more cows, more crop land) may be increasingly important.

Residential development can also have somewhat less direct negative impacts on farm operations. Often new non-farm rural residents are not happy with the hours, odors, and noise of farm operations. Although state law now guarantees existing farm operations the right to continue their operations, neighbors can exert social pressure to limit farming activities. Some farmers indicated a need to know where growth will occur to guide whether to invest millions in a dairy only to end up with a subdivision and complaining neighbors next door.

Travel on rural roads with farm machinery and equipment can also become hazardous as non-farm traffic increases. Residential traffic and farm vehicles compete for use of town roads. Farmers indicate that town roads were not built for residential use and can not handle either the volume or speed of the additional vehicles. Some farmers believe improving Highway 12 would pull commuter traffic off town roads in that part of the County and help farmers who use those roads to move equipment.

Some farmers believe that state programs to preserve farming have often had the opposite effect in a county with considerable development pressure. Many believe the practical effect of the state's Farmland Preservation Program in Dane County has been a loss of farm land to large residential lots. To implement the program, town governments have generally adopted a density standard based on a ratio of one house lot per thirty-five acres owned. This has sometimes resulted in a farmer who owns 140 acres creating 4 lots of 35 acres, rather than splitting off lots of smaller size, which is allowed under the "one per 35" density policy. Farmers are concerned with this trend, believing that houses belong on non-productive farmland and next to other houses.

Some farmers are concerned that the tax credits provided by the Farmland Preservation Program are not sufficient to insure the viability of farming and more effective, long term preservation programs are needed. Some farmers believe that a state stewardship program for farming, with subsidies for those owning the land, would keep land in production rather than being subdivided for development.

In addition to loss of farmland to large residential lots, some farmers are concerned that Dane County takes land out of production to create parks. Others believe that unless some land is acquired for parks, it will be subdivided for residential development and be unavailable as open space in the future.

Local control of land use decisions

Generally, farmers are concerned that local decision-making on land use issues be respected by county government. While they recognize the regional impact of some decisions, many are concerned when decisions made by town government are subject to over-ride by bodies composed of individuals who do not represent rural areas. Planning and land use decisions made by town government are perceived as “grass roots” actions. Farmers are less comfortable with decisions made on land use by other levels of government.

Decisions regarding TDR and PDR prompt classic questions of which level of government should control land use decisions. For example, in a TDR program, some farmers are concerned about whether town government or county government would be responsible for designating receiving areas (for development) and sending areas (to be preserved). Some believe development rights should be transferred only within each town. Others are concerned that designating land for development in towns that are heavily agricultural would be misguided, taking prime farmland out of production and creating further traffic and lifestyle conflicts between farmers and new residents.

Some farmers are concerned that county government decisions regarding the designation of receiving areas and sending areas will not only affect the value of land, but also the cost of doing business. Areas designated for development could bear an increased tax burden to support improved roads, additional services, and bigger schools. Local impacts would need to be figured into decisions about receiving areas.

Finally, farmers are interested in how decisions regarding purchase of development (PDR) would be made. Key decisions for a PDR program would include which land to purchase and assigning values to the preservation of woods, wetlands, and agricultural land.

prepared by Karin Peterson and Tim Saterfield, Dane County Board Office

Other Issues



Regulation of Private Wastewater Treatment Systems

September 10, 1997

State regulations require that every building intended for human habitation or occupancy shall be provided with a properly functioning system for treatment and disposal of domestic waste. In most incorporated municipalities, and in some unincorporated areas, municipal wastewater treatment systems provide this service. However, in most unincorporated areas, service is provided by private, on-site sewerage systems, such as septic tanks, holding tanks, mound systems, or other in-ground systems. In general, these systems function by discharging wastewater into a soil absorption field.

Private treatment systems are regulated by state statute and administrative rule and county ordinances. In Dane County, a partnership has been developed including the State Department of Commerce, Department of Natural Resources and the Environmental Health Division of the Department of Human Services and the Department of Planning and Development, to carry out this regulation.

State Regulation

The state provides the framework for regulation of private wastewater treatment systems in several ways. First, such systems may only be installed by licensed plumbers, to ensure that systems meet the state's plumbing regulations, and the state sets standards for licensing of plumbers. Second, state statutes require that a sanitary permit be issued to the owner of property, by either the state or county, before a system can be installed by a licensed plumber (s.145.135, Wis. Stats.). In Dane County, the Environmental Health Division issues these permits.

In addition to statutory provisions, the state promulgates extensive administrative rules detailing the design, operation, and siting of private sewage treatment systems. Dane County has "agent status" to enforce the state code, as well as its own ordinances. The state provides training and oversight of the county staff involved in carrying out these regulations.

County Regulation

In order to regulate private treatment systems, the county must adopt an ordinance which is in compliance with state statutes and regulations. Chapter 46, Dane County Code of Ordinances, is the County's private sewage system ordinance. The intent of the ordinance is to "regulate the location, construction, installation, alteration, design and use of all private

sewage systems, to further the maintenance of safe and healthful conditions within the county, to prevent and control pollution of surface and subsurface waters, and to provide for the administration and enforcement of this chapter.”

Applicants for a sanitary permit, required before any installation or alteration of a private treatment system, must first have a soil test conducted by a state-certified soil tester. The soil test indicates the suitability of the soils on the proposed site of the system to function as the absorption field. The test determines whether the soil is likely to provide proper treatment of waste so that groundwater is not harmed. In general, systems cannot be installed within three feet of the water table or bedrock. The sanitary permit specifies the suitability of the soil and the specific location on the lot where the septic tank and soil absorption field will be located.

The application for a sanitary permit also includes a site plan to ensure that the minimum setback requirements in state regulations are met. In general, soil absorption systems must be located at least 5 feet from lot lines, 10 feet from sheds or similar structures, 15 feet from swimming pools or habitable slab buildings, 25 feet from a below grade foundation, and 50 feet from a well or high-water mark of a lake or stream

Treatment systems called “mound systems” may be allowed under certain circumstances even when the soils are not found suitable for conventional systems. These systems are designed to operate safely by constructing a mound of soil above ground to provide the soil absorption field otherwise not available.

The zoning ordinance contains various requirements for lot size for structures using private systems, depending upon the zoning district. For example, in the R-1, R-2, R-3, R-3A, R-4 Districts, lots with private systems must be 100 feet wide and no less than 20,000 square feet. These are also contained in state regulations. The zoning administrator ensures that the requirements of the sanitary permit are met before issuing a permit for construction. State statutes require that a county sanitarian inspect the installation of every private treatment system before it is covered over.

Maintenance and Inspection of Existing Systems

Both the state and county have extensive requirements for the on-going inspection and maintenance of existing systems. Dane County now requires that each system be inspected every three years, and accomplishes this through notification to owners of the deadline for inspections, and return notification by owners of inspected. Both the state and county have programs providing limited financial assistance to owners of malfunctioning systems for replacement.

Prepared by:
Tim Saterfield
Legislative Services Director Office of the County Board September, 1997



The Basics of Boundary Agreements

May 29, 1997

Wisconsin Statutes provide structures for cooperative action between municipalities including general agreements, cooperative plans, and municipal revenue sharing. Under the provisions in sections 66.30, 66.023 and 66.028, Wis. Stats., municipalities can address their mutual and individual concerns in a cooperative manner through an administrative process. Many communities have found this preferable to costly and lengthy judicial action.

This brief analysis will focus on cooperative approaches to municipal boundary adjustments and will not directly address annexation and court ordered process of boundary change. The focus is on boundary changes pursuant to either the general authority provided under statutes for intermunicipal agreements or the more recent approach of an approved cooperative plan. Municipal revenue sharing will also be reviewed.

Intergovernmental Cooperation

Since 1939, section 66.30 of Wisconsin Statutes has granted local units of government the general authority to enter into agreements for the cooperative exercise of any power or duty required or authorized by law. Municipal actions under this statute can include agreements to share services, operate regional projects, or to establish boundary agreements. While the scope of possibilities is broad, the focus of this analysis is on boundary agreements.

The activities allowed under this statute are considered quite flexible and few conditions are placed on intergovernmental cooperation by local governments. The statutes specify that s.66.30 “shall be interpreted liberally in favor of cooperative action between municipalities”. The major condition specified in statute is that authority for receiving or providing services or the joint exercise of any power is limited to services, powers, or duties authorized by law for either of the two.

There are multiple local examples of boundary agreements using authority granted by section 66.30. An agreement between the City of Madison and the Town of Middleton concerns road maintenance, road improvements, tax revenue, annexations, and extraterritorial plat review. An agreement between the Village of Waunakee and the Town of Westport concerns annexation, boundary, land use and municipal service issues. These agreements were prompted by an interest in working cooperatively and avoiding future litigation. An overview of each agreement follows.

The City of Madison and the Town of Middleton entered an agreement in November, 1994 regarding future annexation and extraterritorial plat approval. Essentially, the City agreed to reimburse the Town for tax revenue lost as a result of the annexation of a specific parcel for a period of four years while the Town agreed to dismiss its lawsuits regarding annexation of

the specific parcel. In addition, the Town agreed not to judicially oppose annexation of lands to the east of a line, and the City agreed not to exercise its extraterritorial plat approval jurisdiction in areas west of the same line. Finally, the City agreed to take over maintenance and improvement responsibilities for specific roads.

In September, 1996, the Village of Waunakee and the Town of Westport entered an agreement to resolve boundary issues stemming from a lawsuit. The agreement provided for the adjustment of boundaries by adding territory to the Village. In addition, the agreement set a long term growth boundary within which petitions for annexation will not be opposed by the Town. If lands outside of the long term growth area are annexed in violation of the agreement, then the Village agrees to pay tax revenues lost to the Town over a 20 year period. The agreement also designated a joint planning area and created a joint planning commission to supervise activities in this area. Extraterritorial zoning was set up in part of the joint planning area. The Village and the Town set the term of the agreement at 20 years and noted that the agreement is meant to be binding on subsequent elected officials.

Cooperative Boundary Plans

Boundary plans are a relatively recent approach to boundary modification, first authorized by the State Legislature in 1991. Boundary plans, as specified in section 66.023 Wis. Stats., provide municipalities with a structure to govern coordinated development at their edge. The binding elements of the plan have the effect of a contract. Binding elements include the scope and schedule of boundary changes and the delivery of services, particularly sanitary sewer services.

Boundary plans are becoming increasingly popular. Although only two plans have been approved, another 14 are being developed across the state.

There are three stages required before implementation of a boundary plan may occur: development of a cooperative plan, local adoption of the plan by the two or more municipalities involved, and state Department of Revenue approval of the plan. Other boundary altering procedures, such as annexation, cannot be used during the planning period.

Section 66.023 specifies that municipalities setting boundary lines between themselves must prepare a cooperative plan to guide and accomplish harmonious development in accordance with existing and future needs. This is a comprehensive development plan which must include:

- a plan for the physical development of the territory,
- boundary changes and the timing of those changes,
- services to be provided to the area covered by the plan,
- environmental consequences including description of how compliance with federal or state environmental laws affecting the area will be achieved,
- plans for safe and affordable housing,
- description of how the plan is consistent with existing laws,
- the length of the planning period, which must be at least 10 years, and
- an agreement regarding zoning in town territory.

The process for local adoption of a boundary plan includes several steps and can require considerable negotiation among the communities participating in the plan. Communities

should ideally identify goals and objectives they hope to achieve through the process as well as understand all procedural and substantive requirements prior to beginning the formal boundary plan process. The steps for local adoption of a plan include:

- First, each municipality that intends to participate in the preparation of the cooperative plan must pass a resolution authorizing participation. The statutes specify various state agencies and local units of government within five miles of a participating municipality to be notified of the passage of this resolution, including the appropriate county zoning agency or regional planning commission.
- After a draft plan is prepared, the participating municipalities must hold a joint public hearing on the plan during which any person may comment on the plan. County zoning agencies or regional planning commissions must comment in writing on the plan's effect on master plans and municipal services.
- After revisions, the municipalities may then adopt a final version of the plan. If a petition opposing the plan and signed by ten percent of voters is filed with the clerk of a participating municipality, then the plan may be adopted in that municipality only by an affirmative vote of three fourths of the members of the governing body present and voting.
- Statutes provide for an advisory referendum if a petition for a referendum, signed by ten percent of voters, is filed with the clerk of a participating municipality within 30 days after adoption of the final plan.

Finally, the Department of Revenue makes written determination of whether to approve a cooperative plan within 90 days after receiving the plan. The department may hold a public hearing on the plan within a participating municipality. The criteria used to evaluate the plan include adequate provision for delivery of services to the territory covered by the plan, adverse environmental consequences are identified and addressed, and the need for safe and affordable housing will be met.

The Department of Revenue either approves, requests amendment, or rejects the cooperative plan. (The Department of Revenue works under a memorandum of understanding with the Department of Commerce, which has statutory authority for review of boundary plans.) The department's decision to approve or disapprove a plan is subject to judicial review.

The scope of boundary plans may vary. For instance, the Town of Rock and the City of Janesville cooperative boundary plan included a 2,610 acre area, sized to accommodate urban development projected over 20 years. The City of Dodgeville and Town of Dodgeville, on the other hand, are in the process of developing a boundary plan for a single 120 acre parcel. According to a Town of Dodgeville official, the municipalities want to individualize cooperative plans for each parcel.

As with the scope of agreements, the time and cost to develop a boundary plan also varies. It can take from six months to two years to develop a plan. Costs include expenditures for the development of the cooperative plan as well as fees for an attorney. The costs of preparing plans are funded by the municipalities involved.

George Hall, director of Municipal Boundary Review for the Wisconsin Department of Revenue suggests several rules of thumb for reaching a potential agreement. First, he suggests finding a neutral third party, such as county planning agencies or regional planning commissions, to conduct mediation/agreement discussions and produce the required plan.

He also suggests involving all stakeholders at the beginning of discussions. Pick small issues for resolution or several issues so that everyone can be satisfied about some aspect of the agreement. Maintain an open perspective and focus on strategies for future change rather than reconsideration of past animosity.

Differences Between Intergovernmental Agreements and Boundary Plans

According to analysis completed by George Hall, there are key differences between boundary plans and intergovernmental agreements. A boundary plan is approved by the state, is a binding agreement, and is at least 10 years in duration. Unified planning is required with a boundary plan and boundary changes occur not by annexation but according to the plan. On the other hand, an intergovernmental agreement is not approved by the state and is not a binding on subsequent elected boards and councils. Unified planning is not required with intergovernmental agreements and changes in boundaries rely on traditional annexation procedures.

Municipal Revenue Sharing

The most recent addition to the “toolkit” available for intergovernmental cooperation is municipal revenue sharing (66.028 Wis. Stats.). Passed in 1995, this law allows two or more municipalities, by majority vote of their governing bodies, to enter into an agreement to share all or a specified part of revenues derived from taxes or special charges. The requirements for revenue sharing parallel those of boundary agreements: both require public hearings, potential referenda, and the length of the agreement must be at least 10 years.

According to statute, an agreement must meet the following conditions:

- The boundaries of the area within which the revenue is to be shared must be specified;
- The formula for determining the amount of revenues to be shared must be specified;
- The date upon which revenues agreed to be shared shall be paid to the appropriate municipality shall be specified; and
- The method to invalidate the agreement after the minimum period of 10 years shall be specified.
- The municipalities that enter into an agreement must be contiguous to one another or to at least one other municipality that enters into the agreement.

Although no municipalities have instituted a revenue sharing agreement under this statute, some cooperative actions were in place prior to the passage of this law. For example, in their cooperative boundary plan, the City of Janesville reimburses the Town of Rock for lost revenues resulting from attachment of properties from the Town. Once a property is attached, the City will transfer to the Town payments equal to the property taxes and population based state shared revenues that the Town would have collected over the subsequent five years assuming the continuation of current land uses.

According to George Hall, compensation for future value of development may be an opportunity for revenue sharing. For example, access to sewer and water increases the potential density and value of development. If a city or village agrees to provide sewer and

water services to an area of a town, then the town could split some of the additional revenues resulting from development with the city or village.

Other Resources

Hinds, David G., *Intergovernmental Cooperation and Alternative Delivery of Services*, presentation notes from presentations at Wisconsin Town Officials Workshops, Spring, 1995.

Legislative Council Staff, *Statutory Framework for Local Government Cooperation in Delivery of Services* [Staff Brief 94-10], September 23, 1994.

Legislative Council Staff, *Legislation on Shared Government Services, Report No. 12 to the 1995 Legislature*, February 13, 1996.

Although not an exhaustive list of boundary agreements, the following include local examples of agreements under section 66.30, Wis. Stats.

City of Madison/City of Sun Prairie, March 1991: *Authorizing an Intergovernmental Agreement by and between the City of Madison and the City of Sun Prairie regarding Community Separation.*

City of Madison, City of Middleton and Old Sauk Trails Park, March 1994: *Agreement between the City of Madison and the City of Middleton and Old Sauk Trails Park limited partnership regarding detachment of lands and between the City of Madison and the City of Middleton Authorizing connection to the City of Madison's Backhawk Road Sewer.*

City of Madison/Town of Middleton, November 1994: *Annexation, Jurisdiction and Service Agreement Between the City of Madison and the Town of Middleton.*

City of Madison/Town of Blooming Grove/Blooming Grove Sanitary District No. 8, April 1995: *Annexation, Jurisdiction and Service Agreement between the City of Madison, the Town of Blooming Grove and Blooming Grove Sanitary District No. 8.*

Village of Waunakee/Town of Westport, September 1996: *Boundary Stipulation and Intergovernmental Cooperation Agreement between the Village of Waunakee and the Town of Westport.*

An example of a cooperative boundary plan under section 66.023, Wis. Stats. is:

City of Janesville/Town of Rock, May 16, 1996: *Cooperative Boundary Plan.*

prepared by Karin Peterson, Policy Analyst
Office of the County Board



Manure Storage Facilities: Comparison of Dane County to Other Wisconsin Counties

March 23, 1998

The storage and management of manure is an important environmental and land use issue in rural areas. Improper storage or application of manure may cause pollution of ground or surface water.

Forty-two of Wisconsin's 72 counties, including Dane County, have enacted manure storage ordinances. County manure storage ordinances generally define the purpose of the ordinance, the type of facility regulated, the types of regulated activities, and fee and penalty amounts. Ordinances also generally refer to standards of construction set forth by the United States Department of Agriculture Natural Resources Conservation Service (NRCS) Technical Guide.

The Dane County ordinance was enacted 10 years ago and recently there has been discussion of revising and updating it. While ordinances from a half dozen counties were reviewed, this fact sheet largely draws comparisons among the components of the Dane County ordinance and those of Jackson and Marathon counties. The attached map and table, "County Manure Storage Ordinances", prepared by the Department of Agriculture, Trade, and Consumer Protection, summarizes the components of each county ordinance.

Statutory Authority

The authority to regulate new manure storage facilities is granted in Section 92.16, Wis. Stats., which states, "A county, city, village, or town may enact an ordinance requiring manure storage facilities constructed after July 2, 1983, to meet the technical standards of the county, city, village, or town and rules of the department (i.e. DATCP)." County-enacted ordinances are only applicable in unincorporated areas.

Manure storage is addressed in other areas of state law as well. Section 92.14(5), Wis. Stats. addresses animal waste management grants in a priority watershed or priority lake area. Section 92.15, Wis. Stats., addresses local regulation of livestock operations and Section 281.16(3) specifies the following four prohibitions regarding livestock operations:

1. That a livestock operation may have no overflow of manure storage structures;
2. That a livestock operation may have no unconfined manure pile in a water quality management area;
3. That a livestock operation may have no direct runoff from a feedlot or stored manure into the waters of the state; and
4. That a livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

Purpose of Ordinances

The purpose of animal waste storage ordinances vary in scope and specificity from county to county. While the Dane County ordinance focuses only on design and construction of earthen storage facilities, other counties regulate facilities from design to use to abandonment. For example:

- Chapter 14.04 of the Dane County Code of Ordinances states, “The purpose of this ordinance is to regulate the design and construction of earthen manure storage facilities...”
- The Jackson County and Marathon County ordinances are more comprehensive regarding the type of facility and scope of activity regulated. Each define the purpose of the ordinance: “to regulate the location, construction, installation, alteration, design, operation, maintenance, abandonment, and the application of waste and manure from all storage facilities covered by this ordinance...”

Definitions of the Type of Facility Regulated

The type of facility regulated also varies under the three ordinances reviewed. Dane County has the most limited definition of a storage facility while the definition used by both Jackson and Marathon counties is more comprehensive.

- The Dane County ordinance defines an *earthen manure storage facility* as a “facility constructed of earth dikes, or pits and ponds used for temporary storage of animal waste.”
- Both Jackson County and Marathon County define a *storage facility* as “any site or area specifically designed and/or constructed for the purpose of storage or holding of animal waste and manure. This includes any storage facility previously designed and installed meeting the NRCS Technical Guidelines current at the time of installation, any commercial-prefabricated storage facility, concrete slabs, earthen dugouts, dikes or any other area intended for the storage of animal manure. For the purpose of this section, a storage area intended to hold an accumulation of manure within an area excavated, or diked for the purpose of storing the manure, no matter how small that accumulation may be or how long the manure is to be stored there, shall be considered a storage facility.”

Regulated Activities

To regulate waste storage facilities, counties generally have a permit system. The language defining permits is similar for each county: a signed, written statement issued by the responsible county official under the ordinance authorizing the applicant to construct, install, reconstruct, enlarge, or substantially alter a storage facility, or to use or dispose of waste from the facility.

Ordinances also define the technical standards to which a facility must be constructed to qualify for a permit. The most common USDA Technical Guide standards cited in ordinances are:

- Standard 425 addresses waste storage ponds (basically earthen structures or ones with synthetic or concrete liners). According to DATCP, this standard will be repealed later this year and components of the standard will be incorporated into Standard 313. At least one county (Barron County) does not permit the construction of earthen facilities at all.
- Standard 313 addresses waste storage structures, including structures that could be pre-fabricated and above-ground.
- Standard 633 or 590 address nutrient management plans (standard 633 has been repealed and replaced with a more comprehensive standard 590).

To be in compliance with the Dane County Manure Storage Ordinance, a person must receive a permit prior to beginning regulated activities. The Dane County ordinance requires earthen storage facilities be designed and constructed according to standard 425 of the Technical Guide. An earthen manure storage facility plan is also required. The ordinance cites the now obsolete standard 633 regarding waste utilization.

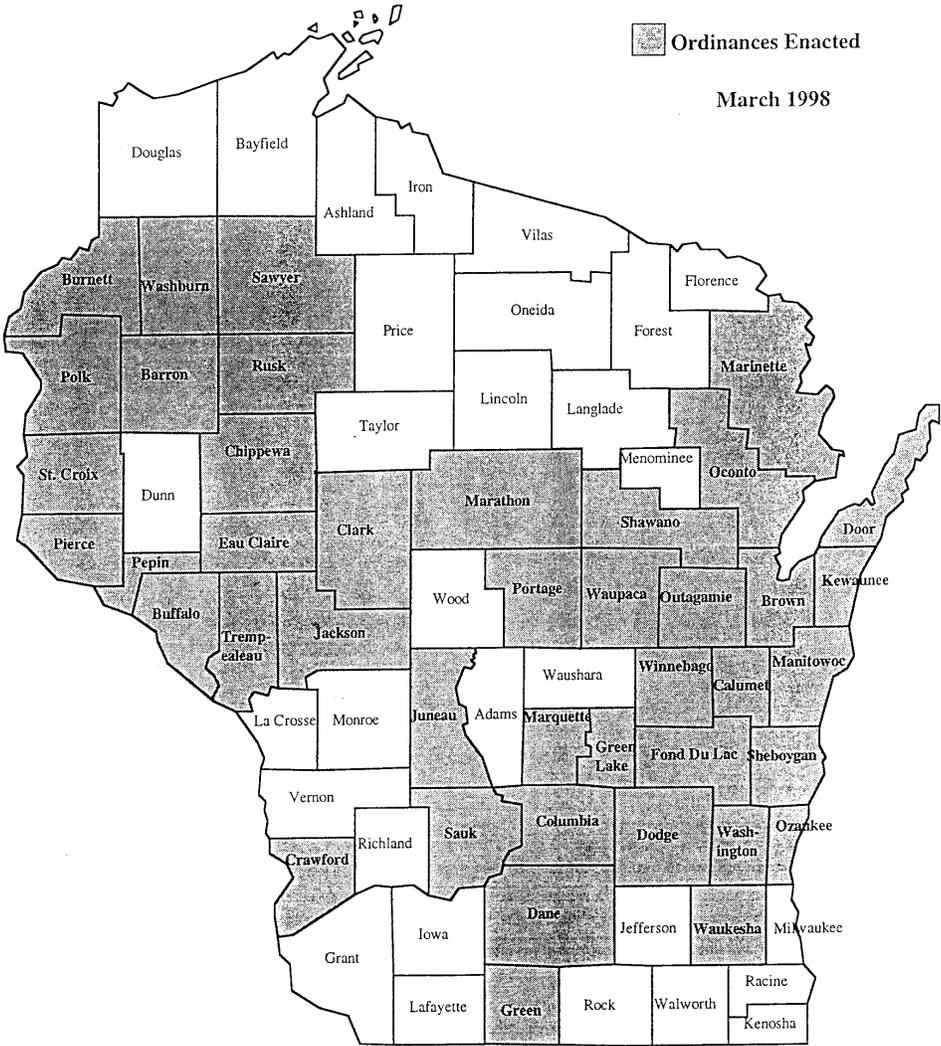
In comparison, the Jackson and Marathon county ordinances contain the general requirement for a permit and further specify regulation of malfunctioning or mismanaged storage facilities, idle storage facilities, existing concrete and earthen lined storage facilities, and short term storage facilities of animal waste and manure. The ordinances specify use of several USDA technical standards, including both 425 and 313. In addition to a waste storage facility plan, Jackson and Marathon counties require both an abandonment plan and safety devices on facilities.

Fees and Penalties

Some counties have no fee for permits while others charge substantial amounts. In Dane County, there is currently no fee. Dodge County charges a base fee of \$25, and an additional \$250 if the applicant uses the technical services of staff from the Land Conservation Department. Marathon County has a fee of \$150 for if a landowner requests a site assessment, and a graduated permit fee, ranging from \$100 to \$350, based on the size of the facility.

Counties vary greatly in the amount of penalties imposed for failure to comply with animal waste storage ordinances. Dane County imposes penalties ranging from \$5 to \$200. Many counties have a \$200 maximum penalty, and some have a \$25 or \$50 minimum penalty. Most counties cite each day as a separate violation, so a \$200 penalty over 10 days would result in a fine of \$2,000.

County Manure Storage Ordinances



Wisconsin Department of Agriculture, Trade and Consumer Protection

County	425	313	Nut. Mgmt	Enforcement	Administration	Effective Date	Permit Fee	Penalty Range
Barron	Yes	Yes	No	Zoning Adm.	Zoning Adm.	Sep-90	\$5	\$5-500
Brown	Yes	Yes	No	LCD	LCD	Apr-86	\$25	\$50 Min.
Buffalo	Yes	Yes	590	LCD	LCD	Apr-94	\$25	\$200 Max.
Burnett	Yes	No	No	LCD	LCD	Feb-85	\$5	\$200 Max.
Calumet	Yes	Yes	633	LCD	LCD	Jun-89	\$25	\$100 Min.
Chippewa	Yes	Yes	633	LCD & ZA	ZA	Mar-86	\$50	\$200-500
Clark	Yes	Yes	590	ZA	LCD & ZA	Feb-93	\$50	\$50-500
Columbia	Yes	No	No	LCD	LCD	May-85	\$25	\$200 Min.
Crawford	Yes	No	633	LCD & ZA	LCD & ZA	Sep-88	\$100	\$100 Min.
Dane	Yes	No	633	ZA	ZA	Mar-88	0	\$5-200
Dodge	Yes	Yes	590	LCD	LCD	May-97	\$25	\$10-200
Door	Yes	Yes	No	LCD	LCD	Feb-87	\$50	\$10-250
Eau Claire	Yes	Yes	633	LCD	LCD	Apr-90	\$25	\$200 Max.
Fond du Lac	Yes	Yes	633	LCD	LCD	Jun-96	\$25	\$100-500
Green	Yes	Yes	590	LCD	LCD	May-97	\$25	\$200
Green Lake	Yes	Yes	No	LCD	LCD	Apr-85	\$100	\$100 Min.
Jackson	Yes	Yes	590	LCD	LCD	Jun-97	\$25	\$25-250
Kewaunee	Yes	Yes	633	LCD	LCD	Dec-97	0	\$200 Min.
Manitowoc	Yes	Yes	590	Corp. Counsel	LCD	Oct-89	\$25	\$50 Min.
Marathon	Yes	Yes	590	LCD	LCD	Feb-98	\$250	\$250-500
Marquette	Yes	Yes	590	LCD	LCD	Sep-95	\$250-500	\$5-500
Marquette	Yes	Yes	590	LCD	LCD	Apr-95	\$25	\$5-500
Oconto	Yes	No	No	LCD & ZA	LCD & ZA	Apr-94	0	\$10-500
Outagamie	Yes	Yes	No	LCD	LCD	Mar-86	\$25	\$200 Min.
Ozaukee	Yes	Yes	590	ZA	ZA	Jul-85	\$5	\$5-100
Peppin	Yes	Yes	590	LCD	LCD	Oct-95	0	\$9-200
Pierce	Yes	Yes	633	ZA & LCD	ZA & LCD	Mar-92	\$20	\$200 Min.
Polk	Yes	Yes	590	LCD	LCD	Dec-90	\$50	\$200
Portage	Yes	Yes	633	LCD	LCD	Dec-96	\$200	\$200 Max.
Rusk	Yes	Yes	633	LCD	LCD	Jun-86	\$175-1000	\$100-200
St. Croix	Yes	Yes	633	LCD	LCD	Jan-87	\$70	\$100-200
Sauk	Yes	Yes	633	ZA & LCD	ZA & LCD	Nov-85	\$125	\$100-500
Sawyer	Yes	Yes	633	LCD	LCD	Jun-90	\$25	\$100-500
Shawano	Yes	Yes	633	ZA	ZA	Feb-91	\$80	\$200 Max.
Shenandoah	Yes	Yes	633	ZA & LCD	ZA & LCD	Jan-84	\$15	\$200 Max.
Strepealeau	Yes	No	590	LCD	LCD	Aug-96	\$25	\$10-500
Trempealeau	Yes	Yes	633	LCD	LCD	Jan-87	\$25	\$200 Max.
Washington	Yes	Yes	680	ZA & LCD	ZA & LCD	Dec-90	\$10	\$10-200
Waukesha	Yes	Yes	680	LCD	LCD	Dec-90	\$25	\$151
Waupaca	Yes	No	633	ZA	ZA	Jan-88	\$90	\$10-200
Winnebago	Yes	Yes	633	LCD	LCD	Jun-86	\$25	\$100 Max.
Winnebago	Yes	Yes	633	ZA & LCD	ZA	May-85	\$15	\$75

Glossary



Glossary of Land Use Terms

September 8, 1997

Annex is to absorb by legal incorporation; to bring previously unincorporated land into a city or village. Annexation is completed by action of the city or village at the request of the property owner.

Certified survey map - Division of land into fewer than five lots requires the preparation of a certified survey map (CSM) by a surveyor. A CSM is a map of land division, not a subdivision, prepared in accordance with section 236.34 of the Wis. Stats. and in compliance with ordinances. A certified survey map has the same legal force and effect as a subdivision plat. CSMs may also be used for other purposes such as defining easements for utility or access purposes.

Cluster development is a way of developing land that allows the grouping of development - typically rural residences - to promote the preservation of surrounding land in agriculture, natural areas, or other open space use.

Comprehensive plan is a long range plan for development of a community which recognizes the physical, economic, social, political, aesthetic, and related factors of the community. A land use plan is only one component of a comprehensive plan. Other components typically include housing, economic development, natural resources, community facilities, and implementation.

Conditional use is a use allowed in a particular zoning ordinance provided certain pre-specified standards are met and a permit is granted. Specific conditions may be added to approval of a conditional use permit to ensure these standards will be met.

Density, control of is the limitation on the occupancy of land. Density can be controlled through zoning requirements such as use restrictions, minimum lot-size requirements, floor area ratio, land-use-intensity zoning, setbacks and yard requirements, or requirements for lot area per dwelling unit.

Development plan, as used in the Dane County zoning ordinance, means a scale drawing of the premises which accurately depicts the shape and dimensions of the lot or parcel, the location and dimensions of all proposed buildings and other structures, the distance in feet from abutting streets and highways and from the side and rear lot lines, the size and location

of all existing buildings and structures, together with such other information as the zoning administrator deems necessary.

Easement - Usually the right to use, for specific purposes, property owned by another. Utility companies often have easements on the private property of individuals for utility facilities and maintenance access. Another common form of easement, and one which can lend design flexibility to a project, is an access easement for purposes of pedestrian and/or vehicular circulation.

Extraterritorial jurisdictions are city or village plat review and zoning regulations that affect town land around the borders of a city or village. In Wisconsin, the extraterritorial zoning jurisdiction of a first, second or third class city extends to town territory three miles beyond the city's corporation limits. The jurisdiction of a fourth class city or village extends one and a half miles beyond city limits.

Land division - Within Dane County, a division of a parcel of land which creates less than five lots, parcels or building sites of 15 acres each or less in area, regardless of whether the act of division also creates one or more lots, parcels or building sites of 15 acres or more.

Land use plan is a basic element of a comprehensive plan. It designates the future use or reuse of the land within a given jurisdiction's planning area, and the policies and reasoning used in arriving at the decisions regarding the distribution and intensity of private development, as well as public decisions on the location of future public facilities and open spaces. It is also a basic guide to the zoning and subdivision controls, urban renewal, and capital improvement programs. In Dane County, the various town land use plans are assembled in the County Farmland Preservation Plan.

Master plan - A plan for guiding and accomplishing coordinated, adjusted and harmonious development in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.

Nonconforming uses are uses (or structures) that lawfully existed prior to the adoption of a zoning ordinance or ordinance amendment, and that do not meet current zoning standards such uses are generally "grandfathered" into the new ordinance, but significant additions or reconstruction is generally not permitted.

Official map is the map indicating the location, width, and the extent of the existing and proposed streets, highways, parkways, parks and other open spaces, adopted by any unit of government enabled to do so by state law.

Parcel - Contiguous lands under one ownership not separated by streets, highways or railroad rights-of-way.

Permitted use is a use which may be lawfully established in a particular district or districts, provided it conforms with all requirements and regulations of such district in which such use is located.

Plat - A map of a subdivision which, when recorded, becomes the legal record of that subdivision. The subdivision process requires the submittal and approval of preliminary and final plats.

Subdivision - In Dane County, a division of a parcel of land where the act of division creates either:

- (a) Five or more lots, parcels or building sites of 15 acres each or less in area; or
- (b) Five or more lots, parcels or building sites of 15 acres each or less in area by successive divisions within a period of five years.
- (c) All area calculations are to be exclusive of any dedications, right-of-way easements or reservations.

Utility services - Transmission and distribution lines both above and below ground which carry electricity, petroleum products, natural or manufactured gas, water, sewer or telephone messages. Included are buildings necessary to operate transmission and distribution lines such as substations, transformer installations, repeater stations, pumping stations, but not including offices, garages, manually operated exchanges, terminal distribution facilities, electric generating plants and sewage disposal plants.

Variance is permission granted by the board of adjustment to build or develop in a way which is inconsistent with the dimensional standards contained in the ordinance.

Zoning amendments - There are two types of amendments to county zoning: map amendment and text amendment. Map amendments change zoning district boundaries and require approval from the county and the town where the land is located. Text amendments change or add provisions within the zoning ordinance, and require approval of the county and a majority of towns.

Zoning districts are classifications established by a zoning ordinance and which appear on the zoning map. The zoning ordinance may prescribe a number of districts, such as agricultural, residential, commercial, or industrial, and fix rules for each district. A zoning ordinance also controls the placement, height, bulk, and coverage of structures within each of the districts.