



Center for Land Use Education

# To Play the Game - You Need to Know the Rules

## Town-County Relationships In Zoning Administration

It is understandable that each municipality would want to plan for and determine uses of land within its jurisdiction. It is also commonly recognized that each community is strongly influenced by uses of land in neighboring communities and throughout their region. This is true for economic development, environmental quality and fiscal issues. For example, a new industrial park may provide employment opportunities for a number of neighboring communities. It may also result in discharges of pollutants to air or waters and increased costs for highways or schools as new workers move to those same neighboring communities. It is also true that land use activities acceptable in some communities or even necessary for modern society (such as power generating stations or landfills) may not be welcome in every community.

The State legislature has adopted a system of zoning for unincorporated rural areas that recognizes both a need for some local town control of land uses and a more regional county-wide approach that balances potentially competing interests of neighboring towns. The strategy, known as county-wide comprehensive zoning, provides a balance of powers between a county and its towns (s. 59.69, Stats.).

General zoning is a regulatory land use plan implementation tool. It divides lands within a jurisdiction into zoning districts by adoption of a zoning map. Within each district some land uses are permitted in every location as a matter of right (permitted uses). Another class of land uses must be custom tailored to a particular site by modifying their location, design or operational characteristics (conditional uses also



Map courtesy of Kevin Struck, Growth Management Educator,  
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called special exceptions). In both cases the general strategy is to assign land use activities to areas with compatible environmental features, adjacent land uses and public infrastructure. The zoning ordinance text designates permitted and conditional uses and describes dimensional and other development standards that apply in each district. Dimensional standards may be relaxed in special cases by a zoning board of adjustment/appeals through a variance procedure and disagreements about administrative orders or ordinance interpretation may be resolved by the same body through administrative appeals.

### Town and county roles under county-wide comprehensive zoning

This discussion concerns county-wide comprehensive zoning adopted under the authority of s. 59.69, Stats. Towns do not have a similar role in county adoption of state mandated shoreland or floodplain zoning or other types of land regulations though they may have political influence if they exercise it effectively. Generally, towns are an “approving agency” under county administered land division (subdivision) regulations.

#### Ordinance adoption

The town board must have initially approved a general county zoning ordinance for it to be effective in the town (s. 59.69(5)(c), Stats.). Failing that approval, the town remains unzoned except for regulations administered by the county related to shorelands, wetlands, floodplains and similar programs not requiring town approval or adoption.

#### Ordinance amendment

Some towns may not understand or do not effectively exercise their prerogatives regarding amendment of county zoning provisions. Chief among these is legal standing for the town board to seek changes to the regulations to accommodate unique circumstances, updated planning or changing conditions. The town board of any town in which the county ordinance is in effect may petition the county for an amendment to the zoning map or ordinance text (s. 59.69(5)(e)(1), Stats.).

Towns also have significant powers in reacting to ordinance changes proposed by landowners and the county. It may be useful, from a town’s perspective, to view this process as consisting of two stages.

The first stage involves development and referral of a proposed amendment to the county board for action (s. 59.69(5)(e)(3), Stats.). A copy of the public notice announcing the county zoning agency’s hearing on an amendment must be provided by registered mail to the clerk of an affected town at

least 10 days prior to the hearing. If the town board files a resolution with the agency disapproving the petition within 10 days after the hearing (a 20-day extension is possible), the agency must modify the petition in response to the town comments or must recommend disapproval to the county board.

The second stage of ordinance amendment involves town reaction to amendments recently adopted by the county (s. 59.69(5)(e)(6), Stats.). Once the county board adopts a zoning amendment, a copy of the ordinance or notification of adoption must be forwarded to the clerks of affected towns. A majority of affected town boards may prevent a general amendment from taking effect by filing a disapproving resolution with the county clerk. A single town may veto a zone change (map amendment) that affects only the town.

#### Town withdrawal from county zoning

Once under county zoning, a town may not withdraw unless the county adopts a comprehensive revision (s. 59.69(5)(d), Stats.). A comprehensive revision is “a complete rewriting of an existing zoning ordinance which changes numerous zoning provisions and alters or adds zoning districts” accomplished by a single ordinance. The revision ordinance may allow the existing ordinance to remain in effect in a town for up to one year. If the town board fails to approve the comprehensive revision within a year, neither the existing ordinance nor the comprehensive revision will be in force in that town.

#### Appeals, conditional uses and variances

Most counties provide notification of pending appeals, conditional uses and variances to their towns. They often struggle to provide a timely response for petitioning property owners while allowing sufficient time for town plan commissions and/or town boards to meet to review petitions. One option is to extend the county review period. Another is town board delegation of authority in these matters to the town plan commission. This should not present a significant concern since one or more town board members are included on the commission. The town board could rescind commission authority if commission members were not sensitive to town board concerns. Greater impediments to effective town participation in these county decisions result from failure of some towns to appoint plan commissions or committees or from insufficient understanding of procedural and substantive requirements related to administrative appeals, conditional uses and variances (see the Zoning Board and Plan Commission Handbooks on our website).

#### **Town zoning in counties comprehensively zoned**

A town board may be granted village powers by electors at an annual or special town meeting (s. 60.62, Stats.). Subsequently, the town board may adopt zoning if: approved by the town meeting or in a referendum,

a plan commission is established, and the ordinance and any later amendments are approved by the county board. In such cases ordinance administration and enforcement are a town responsibility. These generally require a plan commission, zoning administrator, zoning board of appeals, municipal attorney and such facilities and funding as are necessary to support their functions.

A town without village powers may only exercise its role in county zoning in counties that are comprehensively zoned (s. 60.61, Stats.). It may not adopt its own zoning even with county approval.

#### **Town zoning in counties not comprehensively zoned**

A town in a county that is not comprehensively zoned must petition the county to adopt county-wide comprehensive zoning. If the county zoning agency does not develop a plan and ordinance within a year or if the county board fails to adopt the ordinance at its first meeting after the year has expired, the town may proceed to adopt, administer and enforce its own zoning (s. 60.61, Stats.).

#### **Consequences of Comprehensive Community Planning Law**

The State Comprehensive Community Planning Law (improperly labeled the Smart Growth law) does not change the basic authorities or relationships between counties and towns in adoption and administration of zoning. While the law encourages coordinated planning between jurisdictions and regional approaches to land use issues, it does not require consistency between plans. The most important requirement is that each jurisdiction’s land use decisions must be consistent with its own comprehensive plan. Accordingly, it is possible (though not desirable) that a county and town may disagree about acceptable uses of particular lands within the town and that their respective plans will reflect this disagreement. Similarly, county and town plans may initially agree for a particular parcel. Subsequently the county may amend its plan to allow a zoning map amendment while the town may refuse to amend its plan and exercise its disapproval of the county amendment consistent with the town plan. While the planning law is not a panacea, an orderly and rational approach to resolving land use issues coupled with wide stakeholder and public participation in the process should promote coordination and consistency in planning and land use law administration.