

# LAND USE LAW

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## WHO IS IN THE AUDIENCE?

- Municipal Attorneys
- Elected local officials
- City and Village Administrators
- Other municipal officials and consultants
- Private sector consultants interested in land use and development

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## PLAN FOR THE HOUR

- Focus on the law of planning, the law of land divisions, and the law of zoning.
- Real world land use law scenarios.
- Real ordinances, including badly drafted ordinances.
- Real statutes, including badly drafted statutes.

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**PLANNING !**

“Comprehensive Plan” means a guide to the physical, social and economic development of a local government unit.

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**No plan, no regulating.**

- If a local government enacts or amends a subdivision or zoning ordinance, the ordinance must be consistent with its comprehensive plan.

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The enactment of a comprehensive plan by ordinance does not make the plan by itself a regulation.

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Land Use Law Meets Real Life.

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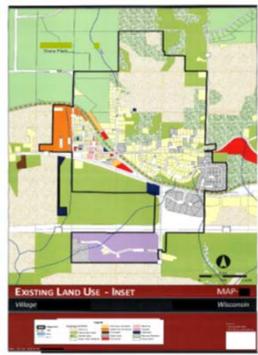
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EXISTING LAND USE MAP



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What does the map show us?

What looks significant, from a planning and land use law perspective?

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EXISTING LAND USE MAP -

- Undeveloped lands in Village currently used for agriculture and pasture.
- No infrastructure in undeveloped areas.

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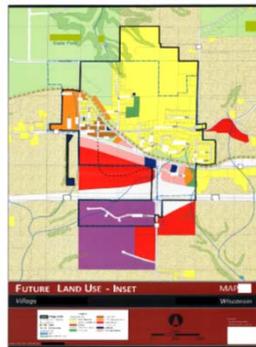
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FUTURE LAND USE MAP



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What looks significant on this map?

What does the map not do?

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FUTURE LAND USE MAP -

Plan calls for transformation of undeveloped lands to “low density residential” and industrial.

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Plan Text: *“Low-density residential”*

“Intended for primarily single family homes at a density of 2 to 4 units per acre.”

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FUTURE LAND USE MAP DOES NOT SHOW

- Lot layout
- Infrastructure layout

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**Comprehensive Plan “consistency requirement”**

- Official mapping
- Zoning ordinances “enacted or enabled”
- Subdivision ordinances “enacted or enabled”

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**REGULATION**

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**CSM 1**



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What is a CSM?

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CONCERNS:

- Does this CSM prevent the Village from implementing its plan? Does it take a huge part of the area planned for residential development, and set it aside for just one home?

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Sources of regulation

- Chapter 236 allows, but does not require, local approval of CSM.
- Any municipality, town or county that has established a planning agency may enact ordinances governing the “subdivision or other division” of land. Wis. Stat. sec. 236.45(2)(ac).

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### Why regulate land division?

- It is a critical step in the development process.
- Use it as a tool to help achieve planning objectives.
- Land division regulations can address:
  - The adequacy and availability of public services to serve development.
  - Paying for installation of necessary new public improvements.
  - The layout of the site, including lot size and lot layout, roads, and sidewalks.
  - Providing for parks and other public needs.

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### What would a lawyer do first?

- Review the local land division regulations.

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## COMPLIANCE

Any person dividing land which results in a subdivision, shall prepare a plat of the subdivision; or which results in a land division, shall prepare a certified survey map in accordance with the requirements of this chapter and:

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A. The provisions of Chapter 236, Wisconsin Statutes.

B. The rules of the State Department of Transportation contained in the Wisconsin Administrative Code for subdivisions which abut a state trunk highway or connecting street.

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C. Village and county ordinances and regulations.

D. Master plan or master plan component adopted by the Village.

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**“LAND DIVISION”**

The division of a lot or parcel of land for the purpose of transfer of ownership or building development, where the act of division creates fewer than five parcels, lots or building sites, any one of which is 15 acres or less in area. The successive land division of a lot or parcel shall not create more than four parcels in any 5-year period.

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## “SUBDIVISION”

The division of a lot or parcel of land for the purpose of ownership transfer or building development, where:

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(1) The act of division creates five or more parcels or building sites of 15 acres each or less in area; or

(2) The act of division creates five or more parcels or building sites of 15 acres or less in area by successive divisions within a period of 5 years.

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### Does the ordinance apply to the CSM?

- No, because it’s not a “land division” or a “subdivision.”
- Yes, and the CSM is not approvable because it doesn’t propose a “land division” or a “subdivision.”
- Practice question: How does the Village Attorney help the client understand this situation without possibly undermining the client’s ability to assert that the ordinance does apply?

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**Can we fix the ordinance?**

- “[I]f a person has submitted an application for an approval, the political subdivision shall approve, deny, or conditionally approve the application solely based on existing requirements.” Wis. Stat. sec. 66.10015(2)(a).

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**Specific ordinance requirements:**

- A CSM shall not be approved unless the Plan Commission and Village Board determine that adequate public facilities and public services are available to meet the needs of the proposed land or subdivision.
  - Much of the land is not in the Urban Service Area.

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**Specific ordinance requirements:**

- A CSM must be in accordance with the Village’s comprehensive plan.
  - The plan calls low density residential development, with a preferred density of 2 to 4 units per acre.
- The A-1 zoning has no maximum lot size requirement, and allows a single family home. Would rejecting the CSM based on failure to meet the preferred density in the Comp plan be an unlawful use of subdivision authority to regulate land use?
  - See *Wood v. City of Madison*, 2003 WI 24.

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### Summary of possible bases for denial.

- CSM doesn't qualify as a "land division" or a "subdivision" under the ordinance. (Does not have at least one lot smaller than 15 acres).
- Land can't be served by public sewer because it's not in the Urban Service Area.
- CSM is not in accordance with 2 to 4 lots per acre density described in the Comprehensive Plan.

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### CSM 2




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### New CSM Issues

- Services are not available, and new homes will not be in the Urban Service Area.
- Home on Lot 1 proposed to be on private well and septic.
- What happens if there is a water quality problem on Lot 1?
- No public improvements are being installed to serve these lots, even though the ordinance requires that.
- Questionable access to Lot 2.

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### New CSM issues - continued

- No park dedication.
- What happens when Lots 2 and 3 are developed? Should Lot 1 be required to extend water and sewer to the house on Lot 1?

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### Can the Village say “yes?”

- “Where the Village Board finds that extraordinary hardship or practical difficulties may result from strict compliance with these regulations, it may approve exceptions and waivers so that substantial justice may be done and the public interest secured.”

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### Exceptions needed to say “yes:”

- Lot 1 unsuitable for significant development.
- Dedication of lands for streets and public ways.
- Dedication of lands for parks.
- Determination of adequate facilities and services.
- Construction of streets and other public improvements.

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### Consistency Requirement

- The CSM is not consistent with the 2 to 4 lots per acre density called for in the comprehensive plan.
  
- Approving a CSM is not one of the actions that must be consistent with the comprehensive plan.

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### Possible conditions of approval:

- Deed restrictions prohibiting development of Lots 2 and 3 until provision is made for installation of public improvements and otherwise meeting requirements of ordinance.
- Attach covenants to Lot 1:
  - Indemnify Village against expenses arising from water problems on Lot 1.
  - Requiring owner of Lot 1 to connect to public water and sewer when they are available.
- Require separate easement agreements providing access to Lots 1 and 3.
- Fees in Lieu of Park Land Dedication.

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### Church proposed on Lot 3



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Local zoning code

- “Church” is not a “permitted use.”
- “Church” is not specifically listed as a conditional use. But...
- “[o]ther uses or situations not specifically provided for in this conditional use section and which the plan commission determines to be consistent with the intent of the conditional use provisions of this ordinance.”

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Ordinance “standards” for approving CUP

- “A proposed conditional use shall be denied unless the Applicant can demonstrate, to the satisfaction of the Village, that the proposed conditional use will not create undesirable impacts on nearby properties, the environment, not the community as a whole.”

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2017 Wisconsin Act 67

- Applicability: “Conditional Use means a use under a conditional use permit, special exception, or other special zoning permission issued by a city/village, but does not include a variance.”

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2017 Wisconsin Act 67 Continued

- “If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit.”
- “Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.”

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2017 Wisconsin Act 67 Continued

- “The requirements and conditions [either in the ordinance or imposed by the zoning board] must be reasonable and, to the extent practicable, measurable...”

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2017 Wisconsin Act 67 Continued

- “The requirements and conditions [either in the ordinance or imposed by the zoning board] must be reasonable and, to the extent practicable, measurable...”
- “Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.”

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2017 Wisconsin Act 67 Continued

- The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.”
- “The city’s decision to approve or deny the permit must be supported by substantial evidence.”

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THE END

Thank you for attending.

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