

Improving the Effectiveness of Wisconsin's Comprehensive Planning Legislation

by

Leslie Albrecht Huber
Jeremy Levin
Margaret E. Mooney

A report written for the Joint Legislative Council

Spring 2002



Workshop in Program and Policy Analysis

**Robert M. La Follette School of Public Affairs
University of Wisconsin–Madison**

This report was prepared by graduate students in the Robert M. La Follette School of Public Affairs at the University of Wisconsin–Madison. The opinions and judgments expressed are those of the students and do not represent the opinions, official or unofficial, of the sponsoring agency.

©2002 Board of Regents of the University of Wisconsin System

All rights reserved.

For additional copies, contact:

Publications Office

La Follette School of Public Affairs

1225 Observatory Drive

Madison, WI 53706

(608) 262-5443

www.lafollette.wisc.edu

Table of Contents

Foreword	v
Executive Summary	vii
Background	1
Proponents' Objectives of the 1999 Legislation	3
Planning Grants	4
Resources Available to Wisconsin Communities	6
Lessons Learned from Other States	6
Kettl Commission on Land Use Planning	7
Characterization of Municipalities and Land-Use in Wisconsin	8
Implementation in Wisconsin	9
Survey Results.....	10
<i>Cost of Developing a Comprehensive Plan</i>	11
<i>Confusion or Difficulties with the Legislation</i>	12
<i>What Happens in 2010</i>	13
Strengths and Weaknesses in the Legislation	13
Organized Approach to Development	14
Lack of Regionalism.....	14
Vagueness in the Law.....	15
<i>Vagueness in required quality of the plan</i>	16
<i>Vagueness in specifics of the legislation</i>	16
<i>Vagueness in the meaning of consistency</i>	17
Enforcement.....	18
Possibility of an Unfunded Mandate	20
Criteria	20
Recommendations	20
Conclusion	23
Acknowledgments	23
Resources	24
Internet Sites	24
Contacts	25
Appendix A: Pertinent Sections of Wisconsin State Statutes	26
Appendix B: Fourteen Goals Related to the Planning Grant Program	30
Appendix C: Recent Planning Reforms in Other States	30
Appendix D: List of Municipalities Interviewed for This Project	32
Appendix E: Questionnaire for Communities	34
Appendix F: Some Specific Responses of Community Representatives.....	35
Appendix G: Regional Planning Commissions in Wisconsin	37
Appendix H: Law School Course Description	38

Foreword

This report on the implementation of the state's comprehensive land use planning legislation is the result of a collaboration between the Robert M. La Follette School of Public Affairs at the University of Wisconsin–Madison and the Joint Legislative Council. The objective of this collaborative effort is to provide graduate students at La Follette the opportunity to improve their policy analysis skills while contributing to the capacity of the Joint Legislative Council to provide the legislature with high quality analysis on issues of concern to the citizens of the state.

The La Follette School offers a two-year graduate program leading to a Master of Public Affairs Degree. Students specialize in policy analysis or public management, or in many cases, both. The authors of this report are all enrolled in Public Affairs 869, *Workshop in Program and Policy Analysis*. During the first few weeks of the course students were introduced to some of the literature on policy analysis. They read Eugene Bardach's *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving* plus a number of articles on conducting policy analysis. They also honed their spreadsheet skills and practiced memo writing. Although acquiring a set of policy analytic skills is important, there is no substitute for *doing* policy analysis as a means of *learning* policy analysis.

The students enrolled in Public Affairs 869 during the Spring 2002 semester were randomly assigned to one of five project teams. Two teams worked on projects for the Legislative Council, while the other three teams completed projects for the Budget and Management Division of the city government in Milwaukee. The topic of this report—comprehensive land-use planning—was chosen by Terry C. Anderson, director of the Legislative Council staff from a list of topics proposed by the staff.

In 1999 the legislature enacted comprehensive land-use planning legislation. The legislation in effect required that all municipalities and counties develop comprehensive plans by 2010. The purpose of this report is to investigate the experiences of local governments throughout the state with this new legislation. The authors conducted a survey of a sample of local governments, and on the basis of their interviews, they make a number of recommendations designed to improve the implementation of the law.

This report does not provide the final word on the land-use planning legislation. The graduate student authors are, after all, novice policy analysts. Nevertheless, much has been accomplished. I trust that both the students and the Legislative Council staff have learned a great deal about the issues involved. The report helps define the issues and provide a foundation for further analysis and decision making.

This report would not have been possible without the support and encouragement of Terry Anderson. Don Dyke, Chief of Legal Services for Legislative Council, and John Stolzenberg, Chief of Research Services for the Council, worked closely with the authors. They were generous with their time and advice. Many other people also contributed to the success of the report. Their names are listed in the acknowledgements printed at the end of the report.

The report also benefited greatly from the active support the La Follette staff. Alice Honeywell, publications director at La Follette, edited the report and produced the

final bound report. Alice, along with Terry Shelton, La Follette's outreach director, and John Witte, director of the La Follette School, provided the students with constructive criticism and advice on their oral presentations of the reports. Joyce Collins and La'Tanya Moore contributed logistic support for the policy analysis projects.

It is my hope that by involving La Follette students in the tough issues faced by state government, they have not only learned a great deal about doing policy analysis, but have gained an appreciation of the complexities and challenges facing both state and local governments in Wisconsin. I also hope that this report will contribute to the work of the Joint Legislative Council and to the ongoing public discussions of land use in Wisconsin.

Andrew Reschovsky
May 13, 2002

Improving the Effectiveness of Wisconsin's Comprehensive Planning Legislation

by Leslie Albrecht Huber, Jeremy Levin, and Margaret E. Mooney

Executive Summary

Passed in 1999 as part of the biennial state budget, Wisconsin Act 9 sets forth minimum standards for towns, villages, cities, counties and regional planning commissions in Wisconsin to develop and implement a comprehensive plan by January 1, 2010. After that date, local programs and actions that affect land use must be consistent with that local government's comprehensive plan. This report to the co-chairs and staff of the Joint Legislative Council evaluates the reception of this requirement by local communities while identifying ambiguities and gaps in the legislation. Our report concludes with recommendations for strengthening and improving the effectiveness of Wisconsin's comprehensive planning legislation.

After engaging in extensive research and personal interviews with a number of experts, we sought feedback from a random sample of representatives of 25 jurisdictions throughout Wisconsin. Based on this information, we developed a 2002 snapshot of the implementation status. We found that nearly all communities we spoke to had begun the planning process. Although there was a range, responses were generally positive. Most local officials were not worried about the 2010 deadline. However, the cost of producing a sophisticated planning document that complies with the law represented a significant problem for many jurisdictions.

Several concerns were brought to our attention again and again. Some wished the legislation had a more regional approach and questioned how conflicts between local and county plans would be resolved. Vagueness was a theme frequently voiced by interviewees. Along these lines, several people raised questions about whether the specifications in the legislation could produce quality plans and how the legislation would be effectively enforced. The meaning of "consistency" was unclear to most people, as well as how consistency would be enforced after 2010. What *was* clear to the people we interviewed was that failure to adopt a comprehensive plan could invalidate a local government's land development regulations. This negative consequence of losing local control over land use decisions appears to be the main motivation for preparation of plans, not financial incentives or penalties.

We conclude our study with four recommendations for potential legislation based on the results of our interviews and best practices from other states. Each recommendation is evaluated using efficiency, equity and political feasibility criteria.

Our recommendations include:

1. Establish a plan review process for *all* plans prior to adoption.

The Wisconsin State Office of Land Information Services should be required, with the help of an appropriate regional planning commission representative (where applicable), to review and approve each plan to ensure quality and consistency prior to plan adoption.

2. Clarify the consistency requirement.

Legislation should define what consistency means as well as provide a set of procedures to be put in place concerning consistency. The American Planning Association Legislative Guidebook and legislation in other states offers guidelines and examples for clarifying the consistency requirement in Wisconsin.

3. Specify an opt-out option for jurisdictions with populations less than 1,000 and negligible growth rates.

Since small, rural localities receive few benefits and substantial costs from planning, they could be exempted from the law and instead fall under the county plan. They would retain the option to plan and access to planning grants should they choose to develop a comprehensive plan. If the population growth rate or urbanization rate exceeded certain levels, the consistency requirement would be applied to these smaller jurisdictions.

4. Continue to fund the grant program.

Cuts for this budget cycle appear unavoidable. However, after this, the legislature should continue to fund the comprehensive plan development grants at their original levels.

Improving the Effectiveness of Wisconsin's Comprehensive Planning Legislation

by Leslie Albrecht Huber, Jeremy Levin, and Margaret E. Mooney

The 1999 Wisconsin biennial state budget included language establishing comprehensive planning legislation (Wisconsin Act 9). Clarifications and statutory language changes were signed into law in May 2000. The legislation provides the framework for local governments to develop and adopt comprehensive plans by detailing what needs to be included and mandating that programs or actions that affect land use after January 1, 2010, be consistent with that local government's comprehensive plan.

The legislation has three main parts. First, it lays out guidelines and definitions for developing a comprehensive plan for every county, city, village, town, and regional planning commission in the state. The 1999 legislation identifies nine key elements that must be included in all comprehensive plans. The legislation also states that after January 1, 2010, any program or action of a local governmental unit that affects land use *shall* be consistent with that local governmental unit's comprehensive plan. This statement is followed by a long list of actions related to land use and growth (Appendix A). Second, the legislation authorizes funding for a grant program designed to reimburse local governmental units for a portion of the cost of developing a comprehensive plan. The legislation outlines 14 goals that the plans must meet in order to be eligible for grants. The planning grants and the third part of the legislation inspired the popular "smart growth" nickname that is often used to refer to the entire law. If a community has a comprehensive plan in place and provides for things such as affordable housing and compact housing densities, they could qualify for smart growth dividend aids after 2005. Originally slated to be included in the 2001–03 budget request, this smart growth dividend program remains undefined and unfunded.

Now in 2002 with three years to evaluate the legislation, supporters and critics alike are raising concerns about ambiguities and gaps in the language of the law. In turn, many are offering ideas about clarifications, additions, and possible changes to the legislation.

The purpose of this report is to develop a snapshot of the current status of Wisconsin's comprehensive planning legislation. We use our research and a study of best practices in other states as a basis for making recommendations for the improvement and implementation of the legislation.

Background

Many authorities consider Wisconsin's comprehensive planning legislation to be the most significant addition to our state's land use laws since the 1920s when Wisconsin adopted the Standard State Zoning Enabling Act (SZEA). This model zoning act, developed by the U.S. Department of Commerce, laid the basic foundation for land development controls in the United States. One of the main criticisms of SZEA was that, even

though it required zoning regulations to be “in accordance with a comprehensive plan,” it failed to define the elements of a comprehensive plan.¹ Seven decades later, the 1999 Wisconsin Act 9 addresses this deficiency.

Another major land use reform effort in Wisconsin was the 1966 state-mandated shoreland and floodplain zoning law. This legislation arose in response to a growing awareness that most local land use decisions have implications that overreach jurisdictional boundaries. It showed a rare willingness by the Wisconsin legislature to put the state in a regulatory role rather than a traditional enabling role. If the state does not approve of a local action, they can not only substitute and administer shoreland zoning, they can also charge the cost back to the delinquent government.

In 1994, Governor Tommy Thompson issued an executive order creating a state agency land use council. The council’s task was to recommend consistent land use policy objectives for state agencies and coordinate state agency efforts to achieve these goals.² The council issued a report entitled “Planning Wisconsin” in 1996 that recommended substantial changes to the local planning framework. The Wisconsin legislature studied the report but concluded that there was “no consensus” on land use in Wisconsin.³ Considering the vast expanse of zoning and development differences in the state, the lack of consensus is not surprising. At the turn of the 21st century, Wisconsin’s land use landscape ranged from highly urbanized Milwaukee County, with only one town and no unincorporated municipalities, to counties like Clark, with a largely rural population, no county zoning, and only one town with local zoning laws. The “no consensus” conclusion of the Legislative Council was a reflection of this diversity, but it also served to establish administrative and legislative interests in addressing land use issues in Wisconsin.

In mid-1998, a unique coalition of groups, including the Wisconsin Realtors Association, 1000 Friends of Wisconsin, the Wisconsin Builders Association, the Wisconsin Chapter of the American Planning Association, Regional Planning organizations, local government associations, and faculty from the University of Wisconsin, began meeting to build consensus concerning land use in Wisconsin. Noting that only 29 percent of the communities in Wisconsin had any sort of land use plan, most of which were either antiquated or not implemented, the coalition argued that some modernization was needed. The group’s work was fueled by a commitment from the state administration that, if they could agree on a planning proposal, it would be placed in the state budget bill.⁴

The consensus coalition established a ground rule that any agreement would not modify Wisconsin’s governance structure for land use decision-making, that is, no institutional changes would be considered. Rather, they worked to create a unified local planning enabling law. Facilitated by University of Wisconsin–Madison Urban and Regional Planning Professor Brian Ohm, representatives from 14 different groups met every other week for six months to craft the proposal.

¹ Advisory Committee on Zoning, U.S. Department of Commerce, *A Standard State Zoning Enabling Act* (SZA), revised edition (U.S. GPO, 1926).

² Brian W. Ohm, *Reforming Land Planning Legislation at the Dawn of the 21st Century-The Emerging Influence of Smart Growth and Livable Communities*, *The Urban Lawyer*, Vol. 32, No. 2 (2000).

³ State of Wisconsin, Joint Legislative Council, *Report of the Joint Legislative Council’s Special Committee on Land Use Policies* (1998).

⁴ Ohm, Brian W., “Reforming Land Planning Legislation at the Dawn of the 21st Century-The Emerging Influence of Smart Growth and Livable Communities,” *The Urban Lawyer*, Vol. 32, No. 2 (2000).

The result was the comprehensive planning legislation contained in the 1999 Wisconsin Act 9, a large bill packed with “everything plus the kitchen sink.”⁵ Wisconsin’s comprehensive land-use law has one of the most substantive definitions of a comprehensive plan in the United States. It includes nine key elements with detailed explanations of what is required by each element. The nine elements are: Issues and Opportunities; Housing; Transportation; Utilities and Community Facilities; Agricultural, Natural, and Cultural Resources; Economic Development; Intergovernmental Cooperation; Land use; and Implementation (For a more detailed explanation of the nine elements as outlined in 66.1001, see Appendix A). Each element must include background information, objectives, community policies, and goals. Cumulatively, comprehensive plan elements should portray what the community is expected to look like in the next ten to twenty years. The legislation also outlines citizen participation requirements and plan adoption procedures.

The legislation required that local governments have a comprehensive plan in place by 2010. This deadline was considered reasonable in light of the funding legislated to help communities develop their plans. The budget deficit facing Wisconsin in 2002 and beyond, however, may result in cuts to the planning grant program, and the implementation date might slip to 2014. According to Richard Lehmann, a lawyer for the Wisconsin chapter of the American Planning Association (WAPA), this is a result of Wisconsin’s reluctance to legislate unfunded mandates. Denise McShane, with the East-Central Wisconsin Regional Planning Commission, offered that it is practical *and* political, practical in that it results from the lack of funding and political in that many groups (such as the Wisconsin Towns Association) don’t support the legislation and want to put it off with hopes that they might never have to produce a comprehensive plan.⁶ In any event, implementing Wisconsin’s comprehensive planning legislation has not occurred, and at this writing it is unclear if plans will be due by 2010 or 2014.

Proponents’ Objectives for the 1999 Legislation

The law’s proponents have four main expectations:

- Get more communities planning.

Many of the legislation’s founders are feeling optimistic about the progress made in this area. The Wisconsin Office of Land Information Service (OLIS) estimates that a full 20 percent of the communities in Wisconsin (cities, villages, towns, counties, tribes, and regional planning commissions) are currently updating their plans.⁷

- Improve the quality of the plans.

The nine elements were intended to get communities to think more broadly and consider, for example, how housing relates to the other elements such as the environment and economic development. These all-encompassing plans should help communities integrate the many services and functions in which they engage.

⁵ Interview with Professor Brian Ohm (University of Wisconsin-Madison Professor Urban and Regional Planning Department), 22 February 2002.

⁶ Interview with Denise McShane (Associate Planner, East Central Wisconsin Regional Planning Commission).

⁷ Interview with Jonquil Johnston (Office of Land Information Services, Department of Administration), 25 February 2002.

- Increase intergovernmental coordination.

As this paper indicates, this is a major issue for many communities. The sponsors hoped that by including this as one of the nine elements and encouraging it through the grant process, significant progress could be made toward more cooperation. When communities apply for planning grants provided in Act 9, they need to try to meet 14 specific goals, contained in their plans, to be eligible for the grant. Intergovernmental cooperation is one of the heaviest weighted goals (17 of the 23 planning grants awarded in 2001 went to multi-jurisdiction groups).

- Change the pattern of development.

This is the “smart growth initiative,” intended to address urban sprawl. It includes a financial incentive that encourages local governmental units to develop plans that meet state standards, such as the Traditional Neighborhood Development Ordinance mandated for communities with populations of 12,500 or more. This ordinance refers to a compact, mixed-use neighborhood where residential, commercial, and civic buildings are within close proximity of each other. The 1999 legislation put forth a model ordinance to help communities meet the short deadline of January 1, 2002. OLIS reports negligible compliance with this requirement; but a planner from Janesville said that they adopted the model ordinance. There is no consequence for non-compliance, but not having an ordinance could disqualify communities from receiving grants or other financial aid in the future, such as the “smart growth dividend,” scheduled for 2005, currently undefined and unfunded. This dividend was intended to reward municipalities and counties that adopt the necessary related ordinances and have a comprehensive plan in place. The Traditional Neighborhood development is one example of an ordinance that might qualify communities for the smart growth dividend.

Planning Grants

OLIS contends that the legislation has “more carrots than sticks” to aid communities in their planning efforts.⁸ The grant program began in 1999 with the goal of making it financially feasible for communities to meet the requirement of developing a comprehensive plan. In the 1999–2001 biennial budget, \$3.5 million in reimbursement grants were distributed to 202 communities through 114 grants. Multi-jurisdictional applications account for the difference between the number of grants awarded and the larger number of communities participating in planning efforts.

The 2001–03 biennial budget originally allocated \$6 million over two years for these state planning grants. A bipartisan agreement during Conference Committee in the 2001–03 biennial budget originally proposed a \$157,900 annual increase to this \$6 million for comprehensive planning grants but this was vetoed by the governor. There have already been 89 applicants requesting \$4.6 million in the 2001–02 fiscal year. OLIS has approved 24 grants servicing 170 communities.⁹ Reductions in funding, however, may be necessary because of Wisconsin’s projected budget deficit.

In his 2002 Budget Repair Bill, Governor McCallum cut \$350,000 in funding for the planning grants. He also allowed municipalities to seek waivers from state-imposed

⁸ Kemp, Sarah, DOA presentation, *Comprehensive Planning Legislation and Planning Grant Program*, Monona Terrace Convention Center, 7 March 2002.

⁹ Interview with Jonquil Johnston (Office of Land Information Services).

mandates on local governments, which will allow a municipality to petition the Department of Revenue (DOR) for relief from any state mandate excluding those related to health or safety. Creating a comprehensive plan could be considered such a mandate.

To date in the budget repair process, comprehensive planning legislation and grants have been the target of various proposals. The Assembly Republican Caucus increased the governor's cut in grant funding to a total of \$500,000 and delayed the compliance date until 2014. In addition, they added language to the waivers from state-imposed mandates provision, setting criteria on how the DOR should judge waiver requests, two of which deal with the mandate placing an undue economic hardship on the community and the mandate not being economically efficient. Both of these criteria are vague and seem to be directed toward comprehensive planning requirements.¹⁰ The Senate Democratic Caucus restored all the previous cuts made to the grant program and increased the funding by \$150,000. With such ideological differences between the two parties, it is hard to predict exactly what may happen in Conference Committee. Some reduction in funding, however, appears likely in this next phase of the process.

Threatened funding cuts to smart growth initiatives like Wisconsin's planning grant program are not uncommon. In fact, the Natural Resources Defense Council (NRDC) reported in March 2002 that the economic slowdown has prompted 12 states to consider cuts to smart-growth related programs. At the same time, however, California, Massachusetts, and Washington are stepping up their smart growth efforts even though they all have record budget shortfalls.¹¹

Communities have also utilized other sources of funding to develop their plans. One of these sources is transportation grants. Originally, a total of \$1 million came from federal transportation funds. This \$1 million appropriation was repeated in fiscal year 2000–01, along with \$1.5 million from Wisconsin general program revenue (GPR) funds. Additionally, one community received money through the Department of Natural Resources (DNR) for a Lake Protection grant.

The comprehensive planning grant program administered through the Office of Land Information Services (OLIS) is fairly competitive. Fourteen goals specific to the grant program must be met (Appendix B provides a list of these goals). Each goal is weighted for scoring purposes. Extra points are given to multi-jurisdictional plans where communities combine their planning efforts with neighboring communities or the county. Comprehensive planning grants are reimbursement grants that are designed only to provide as much funds as the locality is willing to match with their own funds. Grants are awarded in order from the highest score to the lowest score; the money, unfortunately, runs out before all the grants are funded. Each community that receives money receives the full amount requested. Grants have completion deadlines, usually 30 months but often longer for multi-jurisdiction plans or regional planning commissions. A full 25 percent of the reimbursement money depends upon plan adoption, and OLIS must approve all final plans. This provides some oversight by ensuring that communities that get funding for plan development meet all the requirements. OLIS reports that they are being careful in

¹⁰ This observation is inferred from the Assembly Caucus' budget adjustment bill amendment from Rep. Hahn (posted on *The Wheeler Report*) and conversations with different interest groups.

¹¹ Smart Growth On-line, <http://www.smartgrowth.org/>, accessed 27 April 2002.

their reviews in anticipation of 2010 and the possibility of legal challenges.¹² Others, however, feel that the procedures being used and the resources devoted to this are not nearly sufficient to provide the needed oversight.¹³

To date, the Town of Little River is the only community to complete the grant closeout process. Little River was a recipient of a fiscal year 2000–01 federal transportation grant. Even though they received funding only for the transportation element of their plan, they were required to include all nine elements in their plan. A handful of other communities are very close to completing the grant closeout process.

Resources Available to Wisconsin Communities

There is no requirement that communities hire a professional planner to develop their plans, but the extensive final product typically requires some level of assistance. The two main support agencies for community planning in Wisconsin are the University of Wisconsin Cooperative Extension (UWEX) and the Wisconsin Department of Administration's Office of Land Information Services (OLIS). UWEX strives to respond to the needs of a statewide clientele and address state priorities expressed through the comprehensive planning law.¹⁴ Both OLIS and UWEX provide educational presentations and routinely answer questions asked by planners or concerned citizens. OLIS provides several tools and aids to communities, often collaborating with UWEX. Manuals are available to aid in four of the nine key elements with the other five in the works. OLIS is currently working to make state data freely available to communities, such as Geographic Information Systems (GIS), as this can be a costly component of comprehensive plans.

Lessons Learned from Other States

Wisconsin is one of several other states that have enacted comprehensive planning legislation. The most modernized laws are found on the East and West coasts where urbanization is greater. Unlike Wisconsin, the vast majority of states make local comprehensive planning optional.¹⁵ Wisconsin mandates planning but places no conditions on the mandate. Wisconsin law does require, however, that local plans be consistent with state planning policies and goals.

By looking at the experiences of other states, Wisconsin can glean understanding of best practices and try to avoid some of the challenges experienced elsewhere. Best practices and common experiences include the following:

¹² Interview with Jonquil Johnston (OLIS)

¹³ Interview with William Walker (Department of Administration) 8 April 2002 and Interview with David Cieslewicz (1000 Friends of Wisconsin), 1 March 2002.

¹⁴ University of Wisconsin-Extension Internet site, <http://www.uwex.edu/ces/landcenter/>, accessed on 27 March 2002.

¹⁵ Meck, Stuart, *An Ever-Changing Landscape, Planning Communities for the 21st Century*, American Planning Association, December 1999.

- Financial incentives and sanctions facilitate participation.
- A majority of states with comprehensive planning legislation have found it necessary to enact additional legislation clarifying ambiguities, recognizing that ensuring the effectiveness of the legislation is an ongoing process.
- Task forces that study and recommend improvements commonly result in designating state level planning committees, often with oversight authority.
- Several states have passed legislation updating zoning enabling laws and resolving annexation issues, suggesting that growth management legislation is an ongoing issue.
- Strong political leadership and sustained commitment propels planning reforms

(For a more extensive discussion on planning reforms in other states see Appendix C.)

Of the Midwest states, Wisconsin is the only one with a comprehensive planning law, although Minnesota has had a lot of activity aimed at improving local plans. The Twin Cities Metropolitan Council is nationally known for its unique governing style and cutting-edge policies. A proposal introduced in both houses of the Minnesota legislature last year would have required metropolitan area local governments to establish urban growth boundaries, but this did not become law. Iowa, Illinois, and Michigan are essentially still functioning with the 1920s model zoning legislation provided by SZEAL. Wisconsin is thus an island of reform in the heart of the Midwest.

Two notable aspects of Wisconsin's legislation are (1) the proactive nature of the requirement and (2) the fact that the majority of states with comprehensive planning legislation border an ocean. Most other states acted in response to urbanization, while Wisconsin remains largely rural with only two major cities having populations greater than 200,000 (Milwaukee and Madison).

The Kettl Commission and Land Use Planning

Another proponent of wise land use was the Kettl Commission. Formally launched in April 2000 by Governor Thompson as the *Governor's Blue-Ribbon Commission on State-Local Partnerships for the 21st Century*, it was chaired by UW-Madison professor Donald Kettl. The commission was supposed to offer recommendations to improve state-local partnerships and increase local government partnerships with one another. They found that the smart growth law played an integral part in encouraging partnerships.

The smart growth legislation, which had already been in place at the time of the commission's hearings, includes the important elements of intergovernmental cooperation and economic development—two principles that were central to the commission's idea of an area-wide growth-sharing program. The program's aim was to strengthen the partnerships between communities and produce "strong incentives for municipalities to work collaboratively on cost-effective ways of delivering services."¹⁶ The program,

¹⁶ Professor Donald Kettl, Chair. *Governor's Blue-Ribbon Commission on State-Local Partnerships for the 21st Century*, January 2001, p. 46.

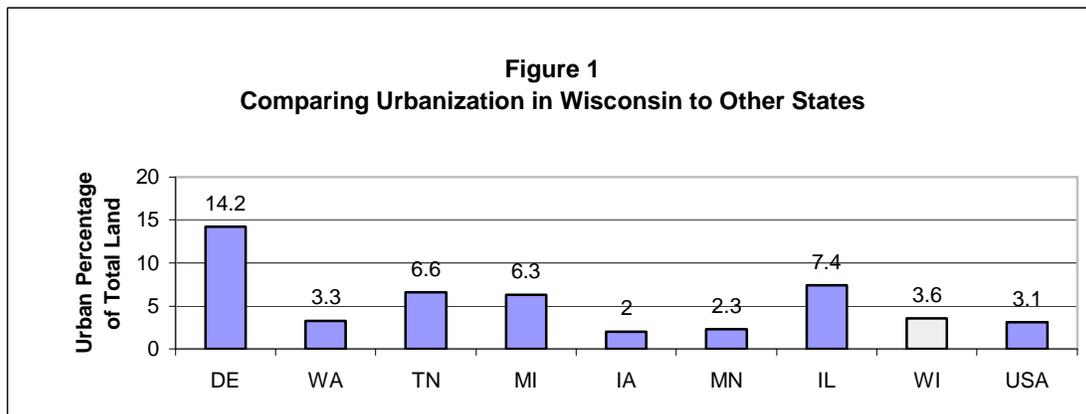
which would seek to increase these partnerships, would provide an incentive payment, similar to shared revenue, but based on collaborative efforts undertaken by neighboring communities. Comprehensive land use was seen as one of the most important types of collaboration. The commission calculated that “no part of the infrastructure is as important as the use of land. It will prove just as important in the future.”¹⁷

Characterization of Municipalities and Land Use in Wisconsin

In order to understand what the legislation means for local governments in Wisconsin, and to get a full picture of the implementation process, it is important to first have some insight into the characteristics of the localities and of land use throughout the state.

Wisconsin is known for being rural, yet it has one of the highest numbers of governments per capita in the nation.¹⁸ This accentuates the complexity of cooperation and consistency issues related to planning and development in our state. To be exact, Wisconsin is composed of 190 cities, 395 villages, 1,265 towns, 72 counties, 9 regional planning commissions, and 6 Native American nations for a total of 1,937 political entities. Of the 1,850 cities, villages, and towns in Wisconsin, 1,032 communities, or 56 percent, had populations of less than 1,000 people in 2000. Twenty-two percent had populations of less than 500 people. These small places are mainly towns, are fairly rural, and are not experiencing large growth or development pressures. In fact, 43 percent of the land in Wisconsin is farmland. This includes 65,602 farms of which 22,576 are dairy farms.¹⁹ Despite these large numbers, less than 1 percent of earned income in Wisconsin comes from agriculture or agricultural services.²⁰

On the other end of the spectrum, Wisconsin also has sizable cities. Milwaukee has more than 600,000 people, and Madison is home to more than 200,000. In fact, 27 percent of the state’s population lives in the ten largest localities. Only 3.6 percent of land in Wisconsin is urban, however, which is similar to the United States as whole (Figure 1). Like most of the rest of the country, the amount of land in urban use in Wisconsin has been growing more rapidly than the population and most of urban land is used for hous-



¹⁷ Kettl, p. 65.

¹⁸ Schmiedicke, David, (Department of Administration) *Wisconsin’s Budget Deficit and the Budget Reform Bill*, brown bag presentation at the La Follette School of Public Policy, 13 March 2002.

¹⁹ 1997 Census of Agriculture.

ing.²¹ No doubt this is why the Town of Eaton zoning administrator, Merle Kulhanek, told us that the biggest problem in developing their comprehensive plan was “where to put houses.”

Implementation in Wisconsin

By speaking to people throughout the state, we sought to form a picture of the implementation of the legislation as it currently stands. From each chosen jurisdiction, we spoke with someone involved with comprehensive planning in the community. Depending on the structure in each place, this included a chief planner, a chair of a temporary planning committee, or someone from the town board. We asked to be referred to the person who could best answer our questions about the implementation of the legislation. Of course, the views expressed could represent this person’s specific opinion and not be representative of the community at large.²² However, we also asked about the general feeling of the area. From these interviews, we hoped to understand who was planning, how the legislation was being received, perceived strengths and weaknesses of the legislation, what barriers localities were facing and what aspects of the plan they found confusing.

Twenty-five jurisdictions were selected using a targeted random sample. We selected communities by dividing the localities into relevant categories, including whether they were a county, whether they had a received a grant, and population. Then representatives from each of these groups were randomly selected. In addition to places chosen randomly, we included a few places because of their unique characteristics. The City of Madison, Dane County, the City of Milwaukee and Milwaukee County were added because of the large percentage of the state’s population that live in these areas.²³ Their feelings and issues would not be represented when talking to smaller municipalities. Also, the town of Little River was selected because it is the only jurisdiction to have currently completed the entire planning process using a grant.

In the end, we spoke with officials in seven cities, one village, eight towns, and six counties. We also spoke with two regional planning commissions and one tribe.²⁴ Of these, three towns, two cities, three counties, and both of the regional planning commissions had received planning grants. A complete list of places chosen and their characteristics is provided in Appendix D. The following map shows the location of the selected places (Figure 2). The questions that we asked each representative are included in Appendix E.

²⁰ Wisconsin Legislative Reference Bureau. *State of Wisconsin, 2001–2002 Blue Book*. Joint Committee on Legislative Organization, Wisconsin Legislature. 2001.

²¹ Malpezzi, Stephen, “*Economic Development: The Role of State and Local Government*” *La Follette Policy Report*, Volume 12, Number 2, Fall-Winter 2001–02.

²² In general, one would expect those involved with planning to be more supportive of planning (although in small communities there was no separate planning person).

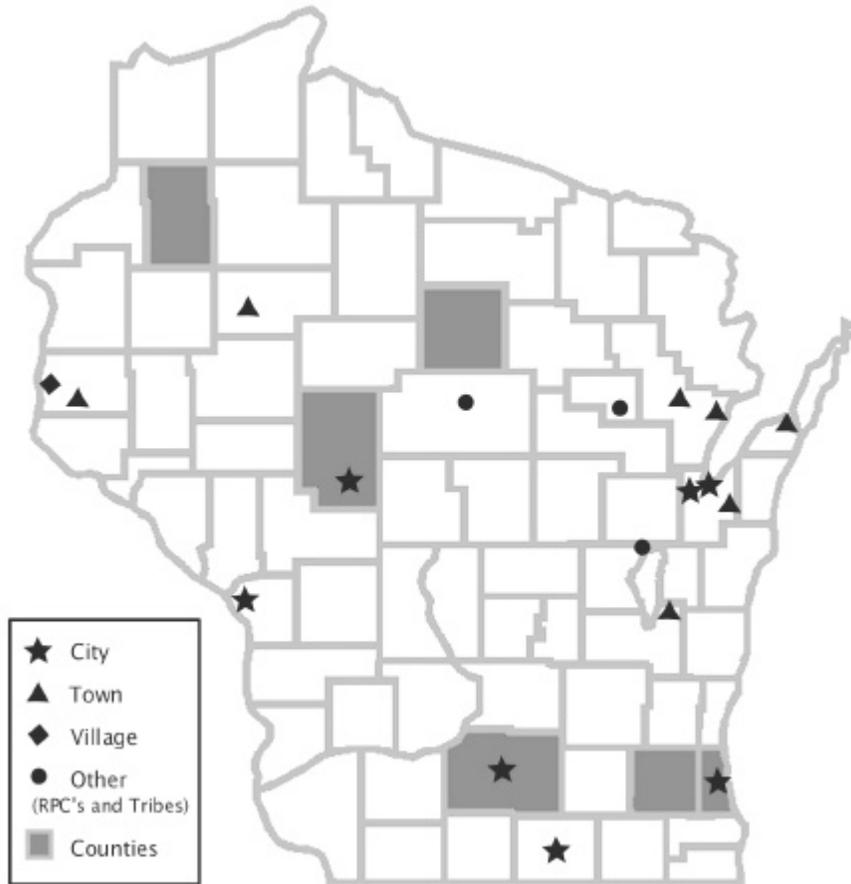
²³ Actually, Milwaukee County is the only jurisdiction not required to have a plan, since it has no unincorporated areas.

²⁴ Tribes are not required to plan. However, planning and transportation grants remain open to them if they desire to develop a plan. So far, only one tribe (Lac Courte Oreille) has applied for and received a grant.

Survey Results

Most of the communities that we spoke with had begun the planning process. Others had at least considered the legislation and decided when they would start. Of

Figure 2
Jurisdictions Surveyed



those interviewed, only four had not begun planning (Seymour, Spruce, Neillsville, and Kinnickinnic).

Overall, there was a mix of reactions to the legislation. Although the majority of interviewees gave generally favorable responses, several reactions were extremely negative. Several respondents expressed the view that legislation such as this was long overdue, while others felt that few positive benefits could be obtained from it. Lines seemed to be mainly drawn between those who saw value in planning in general, aside from the specifics of this particular legislation, and those who didn't. Only three local governments, all of which were small, rural towns, (Seymour, Spruce and Kinnickinnic), indicated that they were completely opposed to the legislation. Seven additional communities expressed their support for planning in general, but were a little more skeptical this particular legislation could be effective. Among these seven were some of the larger local

governments in the state.²⁵ Other jurisdictions, although often still pointing out flaws, were generally supportive of the legislation and its goals. Detailed reactions are listed in Appendix F and will be discussed below.

In general, small and large municipalities tended to respond differently. Although most of the mid-sized to large local governments voiced support for the legislation, their support came with qualifications. Most were already planning prior to the legislation. In order to adhere to the legislation, they would have to invest significant additional time and money. For example, Dane County had numerous partial plans instead of one comprehensive plan. Although the representative from Dane County saw value in bringing these together, it was, nonetheless, a major endeavor. Similarly, Madison previously had many planning documents and saw some of the requirements of the legislation to be bureaucratic and burdensome.

Among the mid-sized to small communities, support varied. Many of these communities did not previously have plans. Some, such as DePere and Nasewaupée, had been considering doing this anyway and were excited about the resources and money now available through the legislation. Many recognized the need for some sort of plan in their community.

For the very smallest communities though, the plan represented a significant drain on their funds for what they saw to be a limited return. Even larger communities often voiced their sympathies for smaller jurisdictions. Most felt that in rural communities experiencing little to no growth, a comprehensive plan of this depth was unnecessary. These small communities believed that many of the required elements did not apply to them. Smaller communities were also more likely to object to “state interference,” meaning the state spelling out what should be done in their area. Another general concern was that planning so far in the future was unrealistic. In no case, however, did an interviewee indicate that their locality intended to boycott the legislation and not plan.

Many of those interviewed acknowledged that their opinion was not the only opinion in their jurisdiction. Planning, and legislation associated with it, tends to draw out a variety of responses. This led Dan Miller of Lincoln to conclude that it provided a wonderful opportunity for consensus building, while Charles Andres of Kinnickinnic stated that legislation like this “only pits people against people.”²⁶ Representatives from Stubbs and Clark County told how past local planning actions had led town board members and county board members to be voted out of office or recalled.²⁷ Some places already faced strong opposition to their in-process plans from those in the community or in surrounding communities. Similarly, although many believed that public participation was a challenge, it was widely recognized as the key to making and enforcing a plan.

Cost of Developing a Comprehensive Plan

An important part of the effect of the legislation on local governments is how much developing a comprehensive plan will cost. In talking with local government and planning officials, we hoped to determine how much making a plan would cost, how

²⁵ The seven were Dane and Waukesha Counties, City of Madison, City of Milwaukee, Franklin, Calumet, and Seymour.

²⁶ Interview with Dan Miller (Zoning Administrator for Lincoln County) and Charles Andres (Chairman of Kinnickinnic Town Board).

²⁷ Interview with Arthur Dixon (Chairman of Stubbs Town Board) and Jay Shambeau (Planning Administrator in Clark County).

grants would come into play and what resources they would use to complete it. Larger localities with planning committees intended to prepare the plan largely by themselves, although even places such as the City of Madison and Dane County were considering contracting out part of it. Smaller communities were relying on consultants for the most part. Although we did not ask specifically about consultants, eight communities expressed their intent to rely on one. A few utilized sources provided by the state or supporting organizations.

The large investment of time and money needed to produce a plan was a common concern, raised by representatives from ten jurisdictions. Even those who did not complain about it specifically indicated that it was no small effort to meet the requirements of the legislation. One small town estimated it would cost more than their yearly budget to develop a plan that met the requirements of the legislation.²⁸

The grant money is playing an important part in funding the planning process. Of those that had not received grants, six had applied and been turned down. Other local governments indicated that they planned to apply. Only Waukesha County, Franklin, and Calumet stated that they had no intention of using the grants.²⁹ Other funding sources were mentioned. Clark and La Crosse Counties had received federally funded transportation grants, as did the town of Little River. Lincoln County had funding from the DNR. For some, the grants, along with the matching funds provided by the local governments themselves, would cover the majority of the cost. Others intended to spend more than their matching share. Nine jurisdictions expressed concern over the continuance of funding for the grants, given the current financial situation of the state. Several places, including East Central Wisconsin Regional Planning Commission, said they felt continuation of funding was vital for the success of the legislation.³⁰

Some property rights groups and citizens of smaller municipalities have complained that the comprehensive planning requirement will bankrupt town governments. Marilyn Hayman with the Citizens for Responsible Zoning and Landowner Rights Inc. represented this view when she wrote to the *Madison Capital Times* complaining about “smart growth.” She criticized the way the plan became law and the excessive price tag of plans for smaller towns, especially when shared revenue to towns is likely to be reduced in the next few years. She urged readers to contact their legislators to ask them to “address the Smart Growth Issue” noting that the legislature has the “authority to make changes to protect property owners and towns.”³¹

Confusion or Difficulties with the Legislation

We asked if there was anything the local officials found confusing or contradictory in the legislation, and whether they envisioned any difficulties in making or enforcing their plans. Answers varied greatly and were not always linked with whether the community had expressed initial support for the legislation. Many of the small local governments, even those who had strong negative feelings toward the legislation, said that they thought the legislation was fairly straightforward. Many had not spent much time

²⁸ Interview with Charles Andres (Chairman of Kinnickinnic Town Board).

²⁹ The Menominee Nation also does not plan to use a grant.

³⁰ Interview with Denise McShane (Associate Planner, East Central Wisconsin Regional Planning Commission).

³¹ Hayman, Marilyn, “Smart Growth Isn’t Smart, It’s a Threat to Towns,” *The Capital Times*, 7 March 2002.

reading or interpreting it, but were mostly depending on consultants. Similarly, people from these places had few concerns over implementation and enforcement. Although some feared the plan would be unpopular, few specific issues were raised.

Large communities tended to have more to say on this issue. Many commented that it is not so much that the legislation is confusing or contradictory, as it is vague. Representatives from Madison and Kinnickinnic expressed frustration that the opinions of jurisdictions across the state were not sought in the process of making the legislation. Four people mentioned the difficulty of meeting the public participation criteria. At the same time, others described this as a benefit of the legislation. It was not uncommon for the same issue to be raised by different people as both a positive and negative aspect of the legislation.

What Happens in 2010

Communities were unconcerned about the 2010 deadline. Nobody mentioned a problem with the timeline as being too short, although several felt that the neighborhood ordinance aspect mandated for January 1, 2002, was unrealistic. Also, some interviewees expressed concern about deadlines associated with the grants. Most felt they would be able to meet the deadline, but that it would be tight.

Communities were more divided on whether they expected their plans to be challenged or to create enforcement problems after 2010. Several, such as Dan Miller from Lincoln County, acknowledged that as with anything that affects so many people, there would be those who oppose it. The local governments should expect to be challenged.³² Other responses ranged from little to no concern about enforcement to being convinced that there would be a “field day” in court.³³ As a representative from Dane County stated, “It will largely depend on the buy-in of the local community.”³⁴ Overall, most communities saw the need for planning in general and for this legislation specifically. As one interviewee expressed, “Their hearts were in the right place.”³⁵ Those who were interviewed saw the potential for the legislation to make a difference, although it also represented a large commitment of resources on their part. Despite general support though, most saw areas that still needed improvement in the legislation.

Strengths and Weaknesses in the Legislation

By talking to various individuals, including proponents and opponents of the legislation, and representatives of localities throughout Wisconsin, some of the perceived strengths and weaknesses of the comprehensive planning legislation became apparent. It was also evident that opinions depended very much on a person’s background and point of view. As mentioned before, there were many positive reactions to the legislation. However, in order to offer constructive advice, we emphasize the weaknesses that were brought to our attention. After addressing strengths in the section “Organized Approach to Development,” we focus on perceived weaknesses.

³² Interview with Dan Miller (Zoning Administrator for Lincoln County).

³³ Interview with Michael Waidelich (Principal Planner for the City of Madison).

³⁴ Interview with Majid Allen (Planning Personnel for Dane County).

³⁵ Interview with Michael Waidelich (Principal Planner for the City Madison).

Organized Approach to Development

The great benefit many saw in the legislation was the benefit associated with planning in general. That is, communities would now be forced to think ahead and decide what their goals were for their area. They would take steps to protect their interests and prevent growth from occurring in a haphazard and unorganized way. Having decisions laid out ahead of time would save confusion, hassle, and conflict further down the road. Also, those interested in protecting open space and farmland felt that comprehensive planning would enable them to withstand pressure from development projects better. Others appreciated the certainty that planning offered. Instead of developers and local governments wasting time and resources fighting over growth, having decisions largely made in advance could save efforts. The requirement to update plans was thought to be advantageous also. Communities that had avoided planning, had outdated plans, or had a confusing array of plans were now required to get organized and gather this information in one place. As Lincoln County pointed out, the legislation brought together stakeholders that had never worked together in the past.³⁶ Little River Town Chair Dale Behnke commented that there could be “a world of hurt” without planning.³⁷

Lack of Regionalism

According to the legislation, every city, town, village, county, or regional planning office must prepare its own separate comprehensive plan. This approach was chosen for several reasons. Although some of the legislation’s sponsors believed regional planning would, in fact, be more effective, they felt that it was not politically feasible. This is because of the traditional resistance to top-down planning and the reliance on local autonomy in Wisconsin. Many people we talked to felt that with a regional approach, the legislation would not have been enacted. In addition to local governments, the development community, represented by the Builders and Realtors associations, also opposed a regional perspective.³⁸ This is partly because the development community has traditionally been the standard-bearer for the personal property rights of citizens and communities.³⁹ Along these lines then, it must be pointed out that including lack of regionalism as a weakness is subjective. Several local government representatives whom we interviewed liked the local control, and some felt that state was already too involved.

In general, however, this small-scale approach has met with quite a bit of criticism. Even David Cieslewicz, one of the primary authors of the legislation, listed this as one of the legislation’s main weaknesses.⁴⁰ Richard Lehmann felt even more strongly, indicating that a vertical approach (or top-down planning) was the only design that made sense. He pointed out that since the legislation was basically “snuck” through with the budget, they could have just as easily “snuck” through a more regional approach to planning.⁴¹

³⁶ Interview with Dan Miller (Zoning Administrator for Lincoln County).

³⁷ Interview with Dale Behnke (Town Board Chair for Little River).

³⁸ Interview with David Cieslewicz (1000 Friends of Wisconsin).

³⁹ Interview with Tom Larson (Wisconsin Realtors Association) 15 April 2002.

⁴⁰ Interview with David Cieslewicz (1000 Friends of Wisconsin).

⁴¹ Interview with Richard Lehmann (Lawyer for the Wisconsin chapter of the American Planning Association and University of Wisconsin Law School lecturer) 14 March 2002.

The local focus raised vertical consistency concerns for many. Since each place has its own plan at each level, most localities fall under their own plan, the plan of the county, and the plan of the regional planning commission. (Some municipalities are not covered by a regional planning commission. For a map of excluded counties and list of regional planning commissions, see Appendix G.) The legislation does little, however, to spell out what will happen when these plans are not in accordance with one another. Several communities wondered which plan would be granted supremacy. Since no cooperation is mandated, disagreements between plans seem unavoidable. Denise McShane of the East Central Regional Planning Commission believes that ensuring consistency in overlapping areas (including between municipalities' and counties' plans as well as between adjacent municipalities' plans) will be the biggest challenge in enforcing the legislation.⁴²

The legislation does make some attempt to encourage a broader, more cooperative approach to planning, though. First, one of the nine required elements in the plan is inter-governmental cooperation. Despite the fear of tremendous resistance to a more large-scale planning approach from individual local governments, local officials we spoke with praised the intergovernmental aspect of the plan. In our interviews, mention of border disputes or problems with annexations with surrounding jurisdictions was a common theme. David Cieslewicz estimated that this was the number one concern of communities throughout Wisconsin.⁴³ The localities expressed great hope that the intergovernmental cooperation aspect of the plans would be able to help them deal with these issues. By requiring that local governments at least consider the actions of one another, a broader perspective is encouraged. This possibly sets the stage for more integrated, cooperative relationships. Others, however, felt that this aspect of the legislation did not have enough "teeth" and wished it could be strengthened in order to address this major problem throughout the state.⁴⁴

The grant system also encourages a more integrated approach to planning. One of the main criteria for awarding grants is cooperation among local governments. As already stated, 17 of the 23 grants awarded in 2002 were multi-jurisdictional, representing as many as 170 communities throughout Wisconsin.⁴⁵ This illustrates that many communities are adopting this larger vision. In Marathon County, for example, 53 of its 62 municipalities have begun the process of creating a county development plan with individual municipality comprehensive plans through a massive cooperative effort.⁴⁶

Vagueness in the Law

Many people we spoke with felt that certain aspects of the legislation remained vague. Of course, there is some trade-off involved here. As the legislation becomes more specific and detailed, less individual choice and flexibility are given to local communities, which leads to resentment. On the other hand, there are ways to clarify particular parts of the legislation without adding requirements for communities. Many local offi-

⁴² Interview with Denise McShane (Associate Planner, East Central Wisconsin Regional Planning Commission).

⁴³ Interview with David Cieslewicz (1000 Friends of Wisconsin).

⁴⁴ Interview with Majid Allen (Planning Personnel for Dane County).

⁴⁵ Interview with David Cieslewicz, (1000 Friends of Wisconsin).

⁴⁶ Marathon County Internet site, <http://www.co.marathon.wi.us/>, Accessed on 11 March 2002.

cials wondered what certain requirements would mean and what would happen when everything was in place. This vagueness leads both to general problems as well as to confusion in particular areas.

Vagueness in required quality of the plan

As Brian Ohm explained, comprehensive planning is more of an enabling program than a growth management program.⁴⁷ In other words, it mainly details the process of making a plan without setting out what the plan should actually do. Although often called “Smart Growth,” there is little directing growth at all. Michael Waidelich from Madison claims that the legislation mandates only that a community develop some sort of plan that fills particular detailed requirements—it does nothing to ensure that the plan meets any standard of quality.⁴⁸ Similarly, Richard Lehmann has criticized the law, concluding that communities could do basically whatever they pleased while still meeting the loose guidelines set forth in the legislation.⁴⁹

One important and confusing issue is: what defines a quality plan in the first place? Given the subjectivity of the term “quality” and the differences in opinion that abound, it could mean a myriad of things. Agreement among writers or implementers of comprehensive planning legislation on how to define a “quality” plan would be impossible, since it would depend on a person’s particular goals. This legislation does not address quality in content, but instead seeks to establish quality in process. Presumably, the thinking goes, if quality occurs in the process, a quality plan will result. There is no guarantee of this, however. This leads to the concern that a community could go through all the motions of preparing a comprehensive plan as specified in the legislation and still have an end product with little or no real value. As one person stated, those who are opposed to planning in the first place can take the path of least resistance.⁵⁰ With the way things are set up now, this appears inevitable. At the same time, many feel there is no other way to design the legislation, or, at least, no other politically feasible way.⁵¹ Although recognizing the possibility of plans with little value, the legislation’s supporters remain hopeful that quality plans will be the result.⁵²

Vagueness in specifics of the legislation

Several people brought particular instances of vagueness to our attention. Many wondered what it means to have the plan adopted as an ordinance. This is not usually done with plans. What this means remains unclear, although some observers speculated that it will make the plans more binding.

In addition, OLIS offered two suggestions for clarifying the legislation. The first is in response to the handful of towns that suggest they are exempt from the comprehensive planning requirement because of 66.1001 (4) (b) that refers to “plan commissions or other body of local governments.” Most towns do not have plan commissions and need

⁴⁷ Interview with Brian Ohm (University of Wisconsin–Madison Professor, Urban and Regional Planning Department).

⁴⁸ Interview with Michael Waidelich (Principal Planner, City of Madison). He did feel as though the requirements for grants addressed this a little better

⁴⁹ Lehmann, Richard. “A Reading and Analysis of the New Wisconsin Comprehensive Plan and Smart Growth Laws with Emphasis on the Extent of State Direction vs. Local Choice of Plan Content.” paper presented at a Smart Growth Workshop on 21 June 2000.

⁵⁰ Interview with Majid Allen, (Planning Personnel, Dane County).

⁵¹ Interview with William Walker, (Department of Administration).

⁵² Interview with David Cieslewicz, (1000 Friends of Wisconsin).

village powers to adopt one. A bill has been introduced that would grant village powers to all towns in Wisconsin at one time. Another place to clarify an ambiguity is in 66.1001 (3) (s) where the law refers to “any other ordinance, plan or regulation of a local government that relates to land use.” One OLIS representative suggested that although this sounds all-encompassing, it could be strengthened by adding the words “orders and permits” to this list in (3) (s).⁵³ Virtually every town keeps track of building permits, and orders refer to road-building. It appears then that adding this phrase would clarify the intention for small towns to develop a comprehensive plan.

Vagueness in the meaning of consistency

The area of most confusion and concern had to do with the consistency requirement. As noted earlier, SZEAs required that zoning regulations be “in accordance with a comprehensive plan” without defining what a comprehensive plan was. Zoning ordinances divide the jurisdiction of a local government into districts (or zones) and regulate land use activity in each district, the intensity or density of such uses, the bulk of the buildings on the land, parking, and other characteristics or aspects of land use.⁵⁴ In Wisconsin, zoning ranges from the statewide shoreland and floodplain zoning laws to countywide zoning laws and hundreds of local community zoning ordinances. Wisconsin’s comprehensive planning legislation states that all programs or actions of a local government that affect land use must be *consistent* with the local comprehensive plan, including annexations and cooperative boundary agreements as well as zoning and subdivision regulations.⁵⁵

Missing from the legislation is a clear definition of consistency or how to enforce consistency between local zoning laws and the comprehensive plan. Nor is it clear how to ensure that local zoning and plans are consistent with county or state policies. What *is* clear to the people we interviewed is that failure to adopt a comprehensive plan could invalidate a local government’s land development regulations. It is this negative consequence, not financial incentives or the possibility of sanctions, that provides the incentives for compliance.

Wisconsin is currently one of ten states with a consistency requirement, reflecting the culmination of decades of written and oral debates and lawsuits.⁵⁶ Several resources are available for guidance in this area; Robert Lincoln wrote one of the most thorough in 1996. By examining consistency doctrines in numerous states he concluded that:

⁵³ Interview with Jonquil Johnston (Office of Land Information Services).

⁵⁴ Meck, Stuart, “*Growing Smart Legislative Guidebook, Model Statutes for Planning and the Management of Change*, American Planning Association, February, 2002

⁵⁵ Ibid.

⁵⁶ Ibid.

- Consistency must be defined more precisely for use in the review process.
- The meaning of “consistency,” for the purpose of review, must be responsive to the context in which the review is taking place.
- A specialized set of procedures (rather than a general Administrative Procedures Act or judicial review statute) tailored to consistency issues should be put in place, with a specialized court or administrative body that can develop expertise on the issues and develop understandable precedents.
- A range of remedies should be provided to whoever conducts the consistency review, including invalidation, remand, and injunctive-like powers to order local governments to implement their plans.⁵⁷

The American Planning Association (APA) put forth model consistency implementation guidelines in its recent 2002 *Growing Smart Legislative Guidebook*. Section 8-104 embodies the idea that the local comprehensive plan should be implemented through the local regulatory framework. This resource is a good first step for the Wisconsin legislature’s intent on ironing out the consistency ambiguities. However, Richard Lehmann suggests that the steps offered by the APA may not be definitive enough and may still leave gaps in the procedure. One thing he is adamant about, however, is that Wisconsin must pass further legislation defining consistency as it applies to the comprehensive planning legislation.⁵⁸ In fact, Lehmann led a UW Law School seminar studying the consistency issue as it applies to Wisconsin’s comprehensive planning legislation with plans to publish the research findings. One law student assigned to study Oregon and Washington’s growth management laws asserted that Washington had notably clear and complete consistency guidelines that could be a good model for Wisconsin or any state clarifying the consistency requirement.⁵⁹ (For more information on the Law School seminar see Appendix H.)

Enforcement

Closely related to the language on consistency is the question of how the legislation will be enforced. Many people are already speculating about what will happen in 2010 when the deadline approaches. OLIS has begun getting calls from various communities throughout the state wondering how they are going to enforce their plans at a local level, and who at the state level was going to make sure they did it.⁶⁰ As Michael Bobbin from Washburn County wondered, “What will happen to places who opt out of creating a plan?” Speculation varies widely.

Currently, the state has no intention of policing the legislation or even making sure communities have plans. Instead, the issue will mostly be decided in courts. As discussed above, the legislation stipulates that communities must make land use decisions consistent with their comprehensive plans that have met the nine elements. Although a community can be sued in any case, it is hoped that a complete plan, which is consistent

⁵⁷ Lincoln, Robert, “*Implementing the Consistency Doctrine, Modernizing State Planning Statutes: The Growing Smart Working Papers*, American Planning Association report number 402/463, March 1996.

⁵⁸ Lehman, Richard, University of Wisconsin-Law School Seminar, “Land Use Planning and Zoning Consistency,” Spring 2002.

⁵⁹ Vana, Jordan, University of Wisconsin-Law School Seminar presentation, “Planning Systems in Oregon and Washington,” Spring 2002.

⁶⁰ Interview with Jonquil Johnston (Office of Land Information Services).

with the legislation requirements, will provide the needed defense in court. If the plan does not comply, however, it could result in a difficult situation. Some have contended that if one element of the nine does not satisfy the specifications of the legislation, the entire plan becomes invalid and can be picked apart in court.⁶¹ This has led some, such as Richard Lehmann, to speculate that it could easily become a flood of cases for the courts.⁶² Or as Michael Waidelich from Madison put it, the legislation could lead to a “full-employment act for lawyers.”⁶³ In fact, five jurisdictions, in addition to several others we interviewed, brought up this issue, feeling that the enforcement issue was critical in determining the success of the legislation. Of course, this partly depends on how well localities comply with the legislation in the absence of a threat of state enforcement.

One possibility for oversight is currently in place. Although the state will not look at all of the plans, OLIS does look at the plans of places that receive grants. It is unclear how many jurisdictions will end up utilizing the grant process, but quite a large percentage will probably be involved. As explained earlier, when a town is awarded a grant, it is reimbursed 75 percent of the money at plan completion, contingent upon addressing each of the nine key elements and 14 goals set forth. The other 25 percent of the money is held back until the plan is adopted. If this review is done thoroughly, later legal tangles and confusion can be largely avoided and higher quality plans result. OLIS contends that they have been reviewing the plans that receive grant money meticulously. But some are under the impression that the state has only enough resources to review plans in a checklist format, simply ensuring there is something in the plan for each element or goal.⁶⁴ In this case, this process will provide little guidance or enforcing mechanism for the legislation.

Of course, strengthening the review process to meet these goals is not a simple thing to do. First, it would require a major investment of time and personnel. Second, it could lead to resentment among communities that do not like the state to be so intimately involved in their local plan. Urban and Regional Planning Professor Steve Born, who served as the state planning director and the state energy director, suggested that some sort of oversight committee should be reviewing and certifying *all* plans, especially related to the consistency criteria.⁶⁵ He felt that this has to be done by someone outside the local unit and that a state agency would have the most authority.

On the other hand, several localities expressed relief that the state has not set up an enforcing body. There would also be political objections to this. Bill Walker of the Wisconsin Department of Administration believed that the legislation would not have gained the support of many legislators if it had included creation of an enforcing mechanism or oversight body.⁶⁶ Since the state has not expressed a willingness to improve its plan review process, 1000 Friends of Wisconsin is considering assuming this role itself

⁶¹ Interview with David Cieslewicz, (1000 Friends of Wisconsin).

⁶² Lehmann, Richard, “Where’s the Meat?”, posted on the Wisconsin Chapter of the American Planning Association Web page and accessed in March 2002.

⁶³ Interview with Michael Waidelich (Principal Planner, City of Madison).

⁶⁴ Interview with William Walker (DOA) and Interview with David Cieslewicz (1000 Friends of Wisconsin).

⁶⁵ Interview with Professor Steve Born (Department Chair, University of Wisconsin-Madison Urban and Regional Planning Department) 12 April 2002

⁶⁶ Interview with William Walker (DOA).

on a voluntary basis, as was done in Oregon. Of course, without authority from the state, 1000 Friends' review and comments would be advisory.⁶⁷

Possibility of an Unfunded Mandate

Although it is unclear how many jurisdictions the money was intended to support, most local governments are expecting to rely on grants for part of their funding. Given the financial situation of the state in 2002 and beyond, however, many people are understandably nervous. Cuts, although possibly only as a one-time occurrence, seem imminent. At this point, there appears to be little chance that the Smart Growth Dividends, intended to begin in 2005, will materialize. There is no doubt that the disappearance of funding will impact both the localities' abilities to meet the requirements as well as their willingness to strive to do so.

Criteria

In this report, we have evaluated the on-going implementation of the comprehensive planning legislation as enacted in 1999. In the final section of this paper, we discuss a set of policy proposals designed to improve and strengthen the original legislation. We have used three criteria in choosing our policy recommendations—efficiency, equity, and political feasibility. Efficiency in this context refers to getting the most results for the resources invested. In other words, a policy proposal enhances efficiency if it produces higher quality plans in more places while using less time, effort and money. Design and implementation are also important to consider. Equity means that the rewards or burdens of the legislation do not fall disproportionately on one group of citizens or jurisdictions throughout Wisconsin. Politically feasible proposals are those that appear a priori to have a reasonable chance of being enacted or implemented. If it is obvious that a particular proposal would face strong opposition from certain groups in the legislature or from localities in the state, the proposal is probably not politically feasible.

Recommendations

Based on our research and interviews, we recommend that the legislature take the following four actions which are intended to improve the effectiveness of the original comprehensive planning legislation. These proposals are summarized and evaluated using the criteria described above.

5. Establish a plan review process prior to adopting plans.

The quality and consistency of plans was a common concern of interviewees. Some feared communities would only “go through the motions” of developing plans, never producing anything that met any particular standard. This could be addressed in several ways. One possibility is to create an oversight body, which not only would review plans originally, but would continue operating as a regulatory or enforcing agency. We rejected this option, however, since it did not seem feasible in Wisconsin. We believe the state would be reluctant to get involved on such a level, and that communities throughout Wisconsin would put up strong opposition.

Instead, we recommend developing a plan review process. This would involve a one-time review and approval before the plan was adopted. It would be similar to what

⁶⁷ Interview with David Cieslewicz (1000 Friends of Wisconsin).

OLIS is doing now with those receiving grants, but would be more thorough and applied to every jurisdiction, whether or not they received a grant. This option was identified as a best practice put in place by several other states with growth management laws.

By applying a review and approval mechanism to all comprehensive plans, the quality and consistency of plans could be verified prior to adoption. Furthermore, the number of conflicts that might otherwise end up in the courts could be significantly reduced. Ideally this review process would include an avenue for comments by neighboring jurisdictions prior to the plan being adopted. Since only one plan has been approved and adopted to date, the time is ripe for implementing this recommendation. It offers a level of enforcement without actually imposing a hierarchy that would seem onerous to some constituents. To address regionalism concerns, it would be optimal if regional planning commission representatives, jointly with OLIS, reviewed plans of communities within their boundaries. Including 1000 Friends of Wisconsin and the University of Wisconsin–Extension in this process could further enhance a statewide vision.

Requiring that all plans be reviewed could ensure plan quality, and therefore add efficiency to the legislation. Although any kind of enforcing body would increase the required resources committed to the legislation, we believe that resulting improvement in the quality of the plans and the reduction in the hassles in court would more than make up for this. Equity would be increased because it would be more difficult for communities to put minimal effort into the plans. There is some concern over the political feasibility of this alternative. Given that there is already some animosity over the state “dictating” what localities should do, any increased authority turned over to the state would likely lead to resentment. There might be less opposition to granting this authority to regional planning commissions, although some confusion would result since not every jurisdiction is covered by a regional planning commission.

6. Clarify the consistency requirement.

The need to clear up the meaning of consistency was brought up again and again in the literature and by those interviewed. This concern demands attention. Not only should legislation define precisely what consistency means for planning in Wisconsin, a set of procedures tailored to consistency issues should be put in place and a range of remedies provided. Guidelines for developing this legislation are available in the American Planning Association’s 2002 Legislative Guidebook, section 8–104. The State of Washington was identified in our research as having an excellent example of a consistency definition and associated guidelines. Professor Steve Born suggested that a list of the state land use mandates that affect local land use activities should be provided to communities as they develop their comprehensive plans. Such a list could be included in this legislation.

Clarification would increase efficiency by making the legislation easy for all to understand and reducing the possibility of legal challenges. This could lead to monetary savings if it results in fewer court challenges. It could also lead to less time used deciphering and rewriting plans if communities were clear on how to write their comprehensive plans in the first place. Equity would be enhanced by bringing up the level of understanding among communities to a more even level. There appears little reason for this not to be politically feasible. Although it would require some investment of time and effort in order to design and pass the legislation, we believe there should be little opposi-

tion in principle to clarifying the legislation. Since the issues specified in the legislation would have to be dealt with at one time or another, utilizing the resources up front should not present a large political problem.

7. Develop an opt-out option for jurisdictions with negligible growth rates and populations less than 1,000.

We feel that smaller jurisdictions should have an option to opt out of the planning requirements. The burden of constructing a comprehensive plan is too time consuming, too expensive, and largely unnecessary in small, rural areas. The comprehensive plan could be optional for smaller communities as long as they received adequate counsel about their rights and responsibilities. Should a small community seek mandate relief or otherwise opt out of developing a comprehensive plan, they would subject themselves to the elements of the county plan until they adopted one of their own. Of course, some small communities would develop their own plan in order to avoid falling under the county plan. We believe, however, that a significant number of communities would still utilize this option.

The line determining who could be exempt from developing their own plan could be drawn in several ways. A different population cut-off could also be considered, preferably lower than 1,000. Once a jurisdiction grew in population to the opt-out population, it would have 30 months in which to develop a comprehensive plan. Besides population, growth rate should also be considered. If any jurisdiction's population growth rate or urbanization rate exceeded 15 percent over the previous five-year period, (or some other specified rate over a certain number of years) the opt-out option would be eliminated for that community and the plan consistency requirement would kick in.

Exempting smaller communities fares well on all the criteria, although there are some concerns. There is little doubt that this option would increase efficiency. Small and large communities alike, as well as other involved parties, have argued that the value of a comprehensive plan for small localities is limited. Furthermore, the cost of drawing up a plan represents a significant strain on local resources. It also appears that redirecting grant money that might go to these small towns to larger jurisdictions would also represent an increase in efficiency. How much efficiency would actually be gained would depend on how many of these towns would choose not to devise their own plan but to fall instead under the county's plan.

As it stands, the legislation does not appear to be equitable since small towns do not reap the awards that larger communities do from planning. On the other hand, drawing an arbitrary line at any particular size of town under which plans are not required obviously raises equity concerns for those immediately above the line. Unfortunately, this is unavoidable. Also, small communities that have already invested heavily in designing their comprehensive plans could be upset to learn that, under new rules they would not have to design plans. Based on our interviews, however, we believe that most people would be very supportive of this option, making it politically feasible. It should also not be very difficult to implement.

8. Continue to fund the grant program

The legislature should continue to fund the comprehensive plan development grants. Many people we spoke to felt that this was crucial to the mandate and to the success of the legislation. To reiterate the findings of the Kettl Commission, comprehensive

land use is one of the most important collaborations in Wisconsin and “no part of the infrastructure is as important as the use of land.” Best practices exhibited by other states further supports the need for funding for local governments developing comprehensive plans.

This option does raise a few concerns, though. Whether or not efficiency would be increased is hard to determine. Assuming that grants allow communities to make better plans, and that the cost to a community would be higher than to the state, continued funding would increase efficiency. And if planning pays off in general, then assisting communities in planning is an economically efficient investment in the future of Wisconsin. Equity would obviously be increased under this alternative. It is inherently unfair to communities that will develop plans in the future to promise that grant money will be available and then withdraw the money. There are some challenges to political feasibility with this option, however. In a booming economy with the massive revenue surpluses that Wisconsin experienced in the late 1990s, this alternative would be possible and advisable. The ensuing financial problems of the state, however, demonstrate the difficulty of guaranteeing funding. On the other hand, given that the grant money may fall substantially in the 2002 Budget Repair Bill, it will not likely be targeted again soon.⁶⁸

Conclusion

In a perfect world growth would occur without conflict, and ample funding for planning would be present. In our less than perfect world, with limited resources and unlimited opinions, we must compromise, cooperate, and exercise fiscal scrutiny in order to plan adequately for growth while being wise stewards in Wisconsin.

We believe that the recommendations put forth in this report address the major concerns and weaknesses in Wisconsin’s comprehensive planning legislation. We are confident that our recommendations, if acted upon by the legislature, would increase the effectiveness of Wisconsin’s comprehensive planning legislation while advancing the benefits of planning for all.

Acknowledgments

We gratefully acknowledge Professor Andrew Reschovsky for his guidance throughout the writing of this analysis. We would also like to thank David Cieslewicz, Jonquil Johnston, Richard Lehmann, Tom Larson and Professor Brian Ohm for their willingness to share their knowledge of Wisconsin’s comprehensive planning legislation with us. Furthermore, since our analysis weighed so heavily on the input of individuals around the state, we want to thank everything we interviewed for their feedback.

We are also grateful to Don Dyke and John Stolzenberg of the Legislative Council for the opportunity to work under their professional direction. We truly appreciate the time and effort they directed toward our project.

Finally, we would like to express our sincere gratitude to Alice Honeywell for reviewing and editing this report.

⁶⁸ Interview with William Walker (DOA)

Resources

1997 Census of Agriculture.

American Planning Association, *Planning for Smart Growth, 2002 State of the States*, February 2002.

Hayman, Marilyn, *Letter to the Editor*, The Capital Times, March 2002.

Kettl, Donald, Chair, *Governor's Blue-Ribbon Commission on State-Local Partnerships for the 21st Century*, January 2001.

Lehmann, Richard. "A Reading and Analysis of the New Wisconsin Comprehensive Plan and Smart Growth Laws with Emphasis on the Extent of State Direction vs. Local Choice of Plan Content." paper presented at a Smart Growth Workshop on 21 June 2000.

Malpezzi, Stephen, "Economic Development: The Role of State and Local Government" *La Follette Policy Report*, Vol. 12, No. 2, Fall-Winter 2001-02.

Meck, Stuart, "Growing Smart Legislative Guidebook, Model Statutes for Planning and the Management of Change, American Planning Association, February, 2002

Meck, Stuart, "An Ever-Changing Landscape, Planning Communities for the 21st Century, American Planning Association, December 1999

Ohm, Brian W., *Reforming Land Planning Legislation at the Dawn of the 21st Century: The Emerging Influence of Smart Growth and Livable Communities*, The Urban Lawyer, Vol. 32, No. 2 (2000)

Office of Land Information Services, Wisconsin Department of Administration. "A Guide to Wisconsin's Comprehensive Planning Legislation." September 2001.

State of Wisconsin, Joint Legislative Council, *Report of the Joint Legislative Council's Special Committee on Land Use Policies* (1998).

Wisconsin Legislative Reference Bureau. *State of Wisconsin, 2001-2002 Blue Book*. Joint Committee on Legislative Organization, Wisconsin Legislature. 2001.

Internet Sites

American Planning Association (APA)

<http://www.planning.org/growingsmart/states2002.htm>

Portage County Comprehensive Plan

<http://www.uwex.edu/ces/cty/portage/compplan/index.html>

Marathon County Comprehensive Plan

<http://www.co.marathon.wi.us/>

Smart Growth On-line

<http://www.smartgrowth.org/>

State of Delaware Livable Communities Legislation

<http://www.state.de.us/planning/livedel/detail.htm#legislation>

State of Oregon Department of Justice web page
<http://www.doj.state.or.us/releases/rel021301.htm>

University of Wisconsin–Madison, Department of Urban and Regional Planning (URPL)
<http://www.wisc.edu/urpl/>

University of Wisconsin - Extension (UWEX)
<http://www.uwex.edu/ces/landcenter/>

Wisconsin Chapter of the American Planning Association (WAPA)
<http://www.wisconsinplanners.org/>

Wisconsin Department of Administration, Office of Land Information Services (OLIS)
<http://www.doa.state.wi.us/olis/index.asp>

Wisconsin Department of Transportation (DOT)
<http://www.dot.state.wi.us>

1000 Friends of Wisconsin
<http://www.1kfriends.org/>

Contacts

Born, Steve. University of Wisconsin-Madison Professor and Chair of the University of Wisconsin-Madison Urban and Regional Planning Department, (608) 262-9985, Interviewed on 12 April, 2002.

Cieslewicz, David, Executive Director of 1000 Friends of Wisconsin; (608) 259-1000, Interviewed on 1 March 2002.

Johnston, Jonquil, Program and Planning Analyst, Office of Land Information Services, Wisconsin Department of Administration, (608) 264-6103, Interviewed on 25 February 2002.

Larson, Tom, Realtor's Association, (608) 241-2047, Interviewed on 8 March 2002.

Lehmann, Richard, Lawyer for the Wisconsin Chapter of the American Planning Association and lecturer at the University of Wisconsin-Madison Law School, (608) 283-1719, Interviewed on 14 March 2002.

Ohm, Brian W., University of Wisconsin-Madison Professor with the Urban and Regional Planning Department, Interviewed on 22 February 2002.

Stadelman, Richard, Executive Director of Wisconsin Towns Association, (715) 526-3157, Interviewed 11 April 2002.

Walker, William, Wisconsin Department of Administration, (608) 266 2211, Interviewed on 8 April 2002.

Appendix A: Pertinent Sections of Wisconsin State Statutes Chapter 66: General Municipality Law 66.1001

Statutory Language Changes from 1999 Wisconsin Act 9 and Technical Revisions from AB 872 signed into law by Governor Thompson on May 10, 2000. REVISED FOR CHAPTER 66 RECODIFICATION, DECEMBER 22, 2000, *Prepared by:* Office of Land Information Services, DOA

1999 WISCONSIN ACT 9 and AB 872 Technical Changes, with Recodification

Comprehensive planning. (*note: previously, s. 66.0295*)

(1) DEFINITIONS. In this section:

(a) “Comprehensive plan” means:

1. For a county, a development plan that is prepared or amended under s. 59.69 (2) or (3).
2. For a city or a village, or for a town that exercises village powers under s. 60.22 (3), a master plan that is adopted or amended under s. 62.23 (2) or (3).
3. For a regional planning commission, a master plan that is adopted or amended under s. 66.0309 (8), (9) or (10). (*note: previously, s. 66.945(8), (9) or (10)*)

(b) “Local governmental unit” means a city, village, town, county or regional planning commission that may adopt, prepare or amend a comprehensive plan.

(2) CONTENTS OF A COMPREHENSIVE PLAN. A comprehensive plan shall contain all of the following elements:

(a) ***Issues and opportunities element.*** Background information on the local governmental unit and a statement of overall objectives, policies, goals and programs of the local governmental unit to guide the future development and redevelopment of the local governmental unit over a 20-year planning period. Background information shall include population, household and employment forecasts that the local governmental unit uses in developing its comprehensive plan, and demographic trends, age distribution, educational levels, income levels and employment characteristics that exist within the local governmental unit.

(b) ***Housing element.*** A compilation of objectives, policies, goals, maps and programs of the local governmental unit to provide an adequate housing supply that meets existing and forecasted housing demand in the local governmental unit. The element shall assess the age, structural, value and occupancy characteristics of the local governmental unit’s housing stock. The element shall also identify specific policies and programs that promote the development of housing for residents of the local governmental unit and provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs, policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and policies and programs to maintain or rehabilitate the local governmental unit’s existing housing stock.

(c) ***Transportation element.*** A compilation of objectives, policies, goals, maps and programs to guide the future development of the various modes of transportation, including highways, transit, transportation systems for persons with disabilities, bicycles, walking, railroads, air transportation, trucking and water transportation. The element shall compare the local governmental unit’s objectives, policies, goals and programs to state and regional transportation plans. The element shall also identify highways within the local governmental unit by function and incorporate state, regional and other applicable transportation plans, including transportation corridor plans, county highway functional and jurisdictional studies, urban area and rural area transportation plans, airport master plans and rail plans that apply in the local governmental unit.

(d) ***Utilities and community facilities element.*** A compilation of objectives, policies, goals, maps and programs to guide the future development of utilities and community facilities in the local

governmental unit such as sanitary sewer service, storm water management, water supply, solid waste disposal, on-site wastewater treatment technologies, recycling facilities, parks, telecommunications facilities, power-generating plants and transmission lines, cemeteries, health care facilities, child care facilities and other public facilities, such as police, fire and rescue facilities, libraries, schools and other governmental facilities. The element shall describe the location, use and capacity of existing public utilities and community facilities that serve the local governmental unit, shall include an approximate timetable that forecasts the need in the local governmental unit to expand or rehabilitate existing utilities and facilities or to create new utilities and facilities and shall assess future needs for government services in the local governmental unit that are related to such utilities and facilities.

(e) ***Agricultural, natural and cultural resources element.*** A compilation of objectives, policies, goals, maps and programs for the conservation, and promotion of the effective management, of natural resources such as groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, stream corridors, surface water, floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources, parks, open spaces, historical and cultural resources, community design, recreational resources and other natural resources.

(f) ***Economic development element.*** A compilation of objectives, policies, goals, maps and programs to promote the stabilization, retention or expansion, of the economic base and quality employment opportunities in the local governmental unit, including an analysis of the labor force and economic base of the local governmental unit. The element shall assess categories or particular types of new businesses and industries that are desired by the local governmental unit. The element shall assess the local governmental unit's strengths and weaknesses with respect to attracting and retaining businesses and industries, and shall designate an adequate number of sites for such businesses and industries. The element shall also evaluate and promote the use of environmentally contaminated sites for commercial or industrial uses. The element shall also identify county, regional and state economic development programs that apply to the local governmental unit.

(g) ***Intergovernmental cooperation element.*** A compilation of objectives, policies, goals, maps and programs for joint planning and decision making with other jurisdictions, including school districts and adjacent local governmental units, for siting and building public facilities and sharing public services. The element shall analyze the relationship of the local governmental unit to school districts and adjacent local governmental units, and to the region, the state and other governmental units. The element shall incorporate any plans or agreements to which the local governmental unit is a party under s. 66.0301, 66.0307 or 66.0309 (*note: previously, s. 66.30, 66.023, or 66.945*) The element shall identify existing or potential conflicts between the local 4 governmental unit and other governmental units that are specified in this paragraph and describe processes to resolve such conflicts.

(h) ***Land-use element.*** A compilation of objectives, policies, goals, maps and programs to guide the future development and redevelopment of public and private property. The element shall contain a listing of the amount, type, intensity and net density of existing uses of land in the local governmental unit, such as agricultural, residential, commercial, industrial and other public and private uses. The element shall analyze trends in the supply, demand and price of land, opportunities for redevelopment and existing and potential land-use conflicts. The element shall contain projections, based on the background information specified in par. (a), for 20 years, in 5-year increments, of future residential, agricultural, commercial and industrial land uses including the assumptions of net densities or other spatial assumptions upon which the projections are based. The element shall also include a series of maps that shows current land uses and future land uses that indicate productive agricultural soils, natural limitations for building site development, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities, as those terms are used in par. (d), will be

provided in the future, consistent with the timetable described in par. (d), and the general location of future land uses by net density or other classifications.

(i) **Implementation element.** A compilation of programs and specific actions to be completed in a stated sequence, including proposed changes to any applicable zoning ordinances, official maps, sign regulations, erosion and storm water control ordinances, historic preservation ordinances, site plan regulations, design review ordinances, building codes, mechanical codes, housing codes, sanitary codes or subdivision ordinances, to implement the objectives, policies, plans and programs contained in pars. (a) to (h). The element shall describe how each of the elements of the comprehensive plan will be integrated and made consistent with the other elements of the comprehensive plan, and shall include a mechanism to measure the local governmental unit's progress toward achieving all aspects of the comprehensive plan. The element shall include a process for updating the comprehensive plan. A comprehensive plan under this subsection shall be updated no less than once every 10 years.

(3) ACTIONS, PROCEDURES THAT MUST BE CONSISTENT WITH COMPREHENSIVE PLANS.

Beginning on January 1, 2010, any program or action of a local governmental unit that affects land use shall be consistent with that local governmental unit's comprehensive plan, including all of the following:

- (a) Municipal incorporation procedures under s. 66.0201, 66.0203 or 66.0215. (*note: previously, s. 66.013, 66.014, 66.012*)
- (b) Annexation procedures under s. 66.0217, 66.0219, or 66.0223. (*note: previously, s. 66.021, 66.024 or 66.025*)
- (c) Cooperative boundary agreements entered into under s. 66.0307. (*note: previously, s. 66.023*)
- (d) Consolidation of territory under s. 66.0229. (*note: previously, s. 66.02*)
- (e) Detachment of territory under s. 66.0227. (*note: previously, s. 66.022*)
- (f) Municipal boundary agreements fixed by judgment under s. 66.0225. (*note: previously, s. 66.027*)
- (g) Official mapping established or amended under s. 62.23 (6).
- (h) Local subdivision regulation under s. 236.45 or 236.46. 5
- (i) Extraterritorial plat review within a city's or village's extraterritorial plat approval jurisdiction, as is defined in s. 236.02 (5).
- (j) County zoning ordinances enacted or amended under s. 59.69.
- (k) City or village zoning ordinances enacted or amended under s. 62.23 (7).
- (l) Town zoning ordinances enacted or amended under s. 60.61 or 60.62.
- (m) An improvement of a transportation facility that is undertaken under s. 84.185.
- (n) Agricultural preservation plans that are prepared or revised under subch. IV of chapter 91.
- (o) Impact fee ordinances that are enacted or amended under s. 66.0617. (*note: previously, s. 66.55*)
- (p) Land acquisition for recreational lands and parks under s. 23.09 (20).
- (q) Zoning of shorelands or wetlands in shorelands under s. 59.692, 61.351 or 62.231.
- (r) Construction site erosion control and storm water management zoning under s. 59.693, 61.354 or 62.234.
- (s) Any other ordinance, plan or regulation of a local governmental unit that relates to land use.

(4) PROCEDURES FOR ADOPTING COMPREHENSIVE PLANS. A local governmental unit shall comply with all of the following before its comprehensive plan may take effect:

(a) The governing body of a local governmental unit shall adopt written procedures that are designed to foster public participation, including open discussion, communication programs, information services and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan. The written procedures shall provide for wide distri-

bution of proposed, alternative or amended elements of a comprehensive plan and shall provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments.

(b) The plan commission or other body of a local governmental unit that is authorized to prepare or amend a comprehensive plan may recommend the adoption or amendment of a comprehensive plan only by adopting a resolution by a majority vote of the entire commission.

The vote shall be recorded in the official minutes of the plan commission or other body. The resolution shall refer to maps and other descriptive materials that relate to one or more elements of a comprehensive plan. One copy of an adopted comprehensive plan, or of an amendment to such a plan, shall be sent to all of the following:

1. Every governmental body that is located in whole or in part within the boundaries of the local governmental unit.
2. The clerk of every local governmental unit that is adjacent to the local governmental unit which is the subject of the plan that is adopted or amended as described in par. (b) (intro.).
3. The Wisconsin Land Council.
4. After September 1, 2003, the Department of Administration.
5. The regional planning commission in which the local governmental unit is located.
6. The public library that serves the area in which the local governmental unit is located.

(c) No comprehensive plan that is recommended for adoption or amendment under par. (b) may take effect until the local governmental unit enacts an ordinance that adopts the plan or amendment. The local governmental unit may not enact an ordinance under this paragraph unless the comprehensive plan contains all of the elements specified in sub. (2). An ordinance may be enacted under this paragraph only by a majority vote of the members elect, as defined in s. 59.001 (2m), of the governing body. An ordinance that is enacted under this paragraph, and the plan to which it relates, shall be filed with at least all of the entities specified under par. (b).

(d) No local governmental unit may enact an ordinance under par. (c) unless the local governmental unit holds at least one public hearing at which the proposed ordinance is discussed. That hearing must be preceded by a class 1 notice under ch. 985 that is published at least 30 days before the hearing is held. The local governmental unit may also provide notice of the hearing by any other means it considers appropriate. The class 1 notice shall contain at least the following information:

1. The date, time and place of the hearing.
2. A summary, which may include a map, of the proposed comprehensive plan or amendment to such a plan.
3. The name of an individual employed by the local governmental unit who may provide additional information regarding the proposed ordinance.
4. Information relating to where and when the proposed comprehensive plan or amendment to such a plan may be inspected before the hearing, and how a copy of the plan or amendment may be obtained.⁶⁹

⁶⁹ Wisconsin Statute 66.1001 as prepared by the Office of Land Information Services, DOA, (excludes Planning Grants), http://www.doa.state.wi.us/olis/pdf_files/compplanstats_2001Sept.pdf,

Appendix B: Fourteen Goals related to the Planning Grant Program

The 14 local comprehensive planning goals required by the planning grant program are:

1. Promotion of the redevelopment of lands with existing infrastructure and public services and the maintenance and rehabilitation of existing residential, commercial and industrial structures.
2. Encouragement of neighborhood designs that support a range of transportation choices.
3. Protection of natural areas, including wetlands, wildlife habitats, lakes, woodlands, open spaces and groundwater resources.
4. Protection of economically productive areas, including farmland and forests.
5. Encouragement of land uses, densities and regulations that promote efficient development patterns and relatively low municipal, state governmental and utility costs.
6. Preservation of cultural, historic and archaeological sites.
7. Encouragement of coordination and cooperation among nearby units of government.
8. Building of community identity by revitalizing main streets and enforcing design standards.
9. Providing an adequate supply of affordable housing for individuals of all income levels throughout each community.
10. Providing adequate infrastructure and public services and an adequate supply of developable land to meet existing and future market demand for residential, commercial and industrial uses.
11. Promoting the expansion or stabilization of the current economic base and the creation of a range of employment opportunities at the state, regional and local levels.
12. Balancing individual property rights with community interests and goals.
13. Planning and development of land uses that create or preserve varied and unique urban and rural communities.
14. Providing an integrated, efficient and economical transportation system that affords mobility, convenience and safety and that meets the needs of all citizens, including transit-dependent and disabled citizens.

Appendix C: Recent Planning Reforms in Other States

It probably comes as no surprise that states with committed leadership from either the governor or a key legislator have made more strides in reforming planning than those where a political figure to champion the cause is lacking. Included among these leaders are Governor Roy Barnes from **Georgia** where 99 percent of the 688 local governments have completed comprehensive plans that meet the requirements of the 1989 Georgia

Planning Act.⁷⁰ Georgia also requires the development of regional plans, and all but one had been completed as of October 2001.

Maryland's Governor Paris Glendening navigated the passage of two statewide planning laws in 1992 and 1997. Furthermore, he declared in July 2000 that smart growth was his top priority when he became chairman of the National Governors' Association.⁷¹ Similarly, both former Governor Christine Whitman and current Governor Donald DiFrancesco of **New Jersey** have been committed to the 1985 State Planning Act.

Many states have followed the original legislation with clarification legislation and/or committees to study and facilitate the implementation, implying that in order to be successful, a sustained commitment is needed. One example can be found in **Pennsylvania** where the comprehensive planning law, Act 170, was passed in 1988. However, as recently as 1999 and 2000, former Governor Tom Ridge pushed two planning initiatives through, "Growing Greener" (Act 67) and "Growing Smarter" (Act 68), to augment Act 170. Later still, Pennsylvania Act 127 was signed by Ridge in December 2000 to clarify some of the changes made by Acts 67 and 68.⁷²

Rhode Island also followed their original legislation, the Comprehensive Planning and Land Use Regulation Act of 1988, with more direction. Governor Lincoln Almond recently signed an executive order creating a 30-member Growth Planning Council.⁷³ **Vermont** followed up its pioneering statewide planning legislation passed in the 1970s (Act 250) with Act 200, the Growth Management Law, in 1988. In 2001, the **Delaware** legislature passed House Bill 255, which requires counties and local governments to adopt zoning laws that conform to their comprehensive plans.

Tennessee and **Vermont** are the only other states, besides Wisconsin, pursuing statewide comprehensive land-use reforms in states that do not have an ocean border. **Tennessee** passed its Growth Policy Law in 1998, using urban growth boundaries to ensure more compact and less costly development. Since then, two **Tennessee** state agencies announced a point system to reward counties and municipalities with approved growth plans and impose sanctions against those without such plans when applying for grants. Specifically, the new law prevents funds under the federal Transportation Equity Act for the 21st Century (TEA-21) from being given to localities that do not meet state planning requirements.

Oregon is traditionally known for the creation of urban growth boundaries, geographical delineations to contain city services, and urban development. Oregon provides a good illustration of the importance of maintaining the support of the constituency. Recently, Oregon has been under fire from property rights advocates and a ballot measure that would effectively halt further implementation and enforcement of their 1973 comprehensive planning legislation. "Measure 7" was adopted by the voters in November 2000 and requires government to compensate landowners for the reduction in the value of private property due to government regulations.⁷⁴ Declared unconstitutional by the trial

⁷⁰ American Planning Association, *Planning for Smart Growth, 2002 State of the States*, February 2002

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ State of Oregon Department of Justice web page, <http://www.doj.state.or.us/releases/rel021301.htm>, accessed on 9 March, 2002

court, Measure 7 has been appealed to the state’s Supreme Court; this issue is expected to be resolved in 2002.

Washington’s 1990 Growth Management Act provides several sound practices worth noting. The legislation has clear guidelines on the consistency requirement and mandates that all plans pass a plan review process prior to adoption. Communities with lower populations can choose whether or not they want to develop a comprehensive plan, however, a plan becomes mandatory when the growth rate meets or exceed 17% over the previous decade.⁷⁵

Political Leadership in Wisconsin

At this point, it is unclear whether Wisconsin has an impassioned political champion for comprehensive planning legislation. Former Governor Tommy Thompson signed Wisconsin’s 1999 Act 9 into law. Senator Brian Burke (D-Milwaukee) contributed to the legislation by adding the local comprehensive planning goals, the smart growth dividend, and requirements for traditional neighborhood development ordinances.

Currently, details about Wisconsin’s comprehensive planning legislation hangs in the balance, and with key elections approaching in November of 2002, future leadership on this issue is likely to depend on the outcomes at the polls.

Appendix D: List of Municipalities Interviewed for This Project

Name	Population	County	Contact Person and Title
Calumet (Town)	1,524	Fond du Lac	John M. Bertram, Assessor, Comprehensive Plan Committee Member, (920) 795-4776
Clark County	33,557	Clark	Jim Shambeau, Administrator- Zoning & Land Information Department, (715) 743-5130
Dane County	418,978	Dane	Majid Allen, Planner, (608) 267-2536
De Pere (City)	20,286	Brown	Bill Patzke, Director of Planning and Economic Development
Eaton (Town)	1,128	Brown	Merle Kulhanek, Zoning Administrator (920) 842-2811
Franklin (Town)	1,293	Manitowoc	Harvey Jannette, Town Chairman, (920) 732-3362
Janesville (City)	59,794	Rock	Gale Price, Senior Planner (608) 255-3085
Kinnickinnic (Town)	1,340	St. Croix	Charles Andrea, Town Board Chair, (715) 425-5970
La Crosse (City)	51,818	La Crosse	Lawrence Kirch, AICP Director of Planning, Project Director – LAPC (608) 789-7512

⁷⁵ Vana, Jordan, UW-Law School Seminar presentation, *Planning Systems in Oregon and Washington*, spring 2002.

Lincoln County	29,641	Lincoln	Dan Miller, Zoning Administrator, (715)536-0377
Little River (Town)	1,097	Oconto	Dale Behnke, Town Board Chair (920) 829-5196
Madison (City)	207,248	Dane	Michael Waidelich, Principal Planner, City of Madison, (608) 266-4635
Milwaukee County	955,026	Milwaukee	Dave Novak, Director of Public Works, (414) 278-4835
Milwaukee (City)	605,572	Milwaukee	Allison Semandel, Comprehensive Planner (414) 263-0146
Nasewaupee (Town)	1,799	Door	Dan Polecheck, Town Supervisor, (920) 743-8913
Neillsville (City)	2,731	Clark	Dave Flynn, Dir. of Public works, (715) 743-5678
North Hudson (Village)	3,463	St. Croix	Len Meissen, Village President, (715) 386-5141
Seymour (City)	3272	Outagamie	Mike Pepin, Public Works Director, (920) 833-2397
Spruce (Town)	809	Oconto	Doug Dorow, Town Board Chair, (920) 842-2811
Stubbs (Town)	566	Rusk	Arthur Dixon, Town Board Chair, (715) 868-6844
Washburn County	14,971	Washburn	Michael Bobin, Smart Growth Committee Chair, (715) 466-5899
Waukesha County	64,032	Waukesha	Dick Mace: Manager, County Parks and Land Use, (262) 548-7790
East Central Wisconsin Regional Planning Commission			Denise McShane, Associate Planner, (920) 751-4770
North Central Wisconsin Regional Planning Commission			Dennis Lawrence, AICP, Executive Director, (715) 849-5510x304
Menominee Nation			Brian Kolkowski, Planner, (715) 799-5149

Appendix E: Questionnaire for Communities

1. Are you familiar with Wisconsin's comprehensive planning legislation?
2. Are there things that you find confusing or contradictory about the law? If so, what?
3. What is the current status of the comprehensive planning process in your community? What timeline do you perceive in the future?
4. Are you aware of the planning grants and do you plan to utilize them? How costly do you envision the planning process being?

5. Do you think planning is beneficial? Do you think the legislation will be effective in your area?
6. What do you think will happen in 2010?
7. What difficulties or problems do you see in making the plan and enforcing it?

Appendix F: Some Specific Responses of Community Representatives

Concerns, Problems, or Challenges from Legislation that came up in Interviews

- 1) The relationship between the local and county plan is not clearly specified. Which plan has supremacy? Only the transportation element has to be consistent with regional plans.
Clark County, La Crosse, Lincoln County, North Central Wisconsin Regional Planning Commission
- 2) The legislation requires a large amount of time and money – too large a task for some small places and/or too nit-picky for large places.
La Crosse, Seymour, Spruce, East Central Wisconsin Regional Planning Commission, Clark County, Madison, Stubbs, Kinnickinnic, De Pere, Janesville
- 3) What constitutes a land use regulation is unclear.
Lincoln County
- 4) Ensuring consistency will be extremely challenging.
East Central Wisconsin Regional Planning Commission
- 5) Benefits to small, rural towns are limited.
North Central Wisconsin Regional Planning Commission, Spruce, Seymour, Stubbs, Nasawaupee (particularly don't need transportation element).
- 6) The legislation does not require a quality plan, only that a plan be made.
North Central Wisconsin Regional Planning Commission, Madison, Dane County
- 7) There is a lack of guidance from the state. (Vagueness in general)
Little River, Madison, Dane County, Franklin, Milwaukee County
- 8) It is challenging to keep the public active and participating.
Eaton, Madison, Stubbs, Calumet
- 9) There is no oversight board – no one to make sure plans are enforced, and no consequences for those who do not plan or plan adequately. It could end up in the courts.
Waukesha County, Washburn County, North Central Wisconsin Regional Planning Commission, Dane County, Madison

- 10) The funding will disappear.
Milwaukee, North Hudson, East Central Wisconsin Regional Planning Commission, Washburn County, Madison, Kinnickinnic, De Pere, Little River, Janesville
- 11) The legislation doesn't adequately address annexation issues.
Dane County, Janesville
- 12) The legislation is unclear about what it will mean for a plan to be adopted as an ordinance.
Dane County, Madison
- 13) The legislation did not involve the public or representatives of local governments at the beginning – it was done “under the table”.
Madison, Kinnickinnic
- 14) It is not the place of the state to be involved in local considerations like this.
Stubbs, Kinnickinnic
- 15) The plans will cause divisions between people.
Kinnickinnic

Positive Aspects of the Legislation Offered in Interviews

- 1) Bottom-up approach allows public participation.
Lincoln County
- 2) It encourages cooperation between stakeholders and between communities, that there never has been in the past (particularly with the intergovernmental cooperation part).
Lincoln County, Eaton, Nasawaupee, De Pere, Janesville
- 3) It helps manage and control growth.
Eaton, North Hudson, Washburn County
- 4) Planning in general is good because it provides certainty and consensus to the building community.
Milwaukee, Little River
- 5) It prevents problems before they occur – forces everyone to think about the future – even those who wouldn't on their own. It encourages communities to protect things they value. It provides a vision.
East Central Wisconsin Regional Planning Commission, Washburn County, Clark County, Madison, Little River, Janesville
- 6) The mandated review aspect of the legislation allows for flexibility.
Washburn County

- 7) The legislation will force communities to bring all their various efforts at planning together in one document – to one focus.
Madison
- 8) The legislation still allows for a lot of local control.
Little River, Menominee Nation

Appendix G

Regional Planning Commissions in Wisconsin

Northwest Wisconsin Regional Planning Commission

Counties: Ashfield, Bayfield, Burnett, Douglas, Iron, Price, Rusk, Sawyer, Taylor Washburn

North Central Wisconsin Regional Planning Commission

Counties: Adams, Forest, Juneau, Langlade, Lincoln, Marathon, Oneida, Portage, Vilas, Wood

Bay Lake Regional Planning Commission

Counties: Brown, Door, Florence, Kewaunee, Manitowoc, Marinette, Oconto, Sheboygan

West Central Wisconsin Regional Planning Commission

Counties: Barron, Chippewa, Clark, Dunn, Eau Claire, Polk, St. Croix

East Central Wisconsin Regional Planning Commission

Counties: Calumet, Fond du Lac, Green lake, Marquette, Menominee, Outagamie, Shawano, Waupaca, Waushara, Winnebago

Mississippi River Regional Planning Commission

Counties: Buffalo, Crawford, Jackson, La Crosse, Monroe, Pepin, Pierce, Trempealeau, Vernon

Southwest Wisconsin Regional Planning Commission

Counties: Grant, Green, Iowa, LaFayette, Richland

Southeastern Wisconsin Regional Planning Commission

Counties: Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, Waukesha

Counties **not represented** by an RPC:
Sauk, Columbia, Dodge, Jefferson, Rock,
& Dane (slated for sunset in October 2002)



Appendix H: Law School Course Description, 928-001 SP Land Law: Land Use Planning & Zoning Consistency

Sections Offered in Spring 2002

Instructor: Lehmann

The Wisconsin Legislature recently enacted a statute saying that all land use actions of local governments must be consistent with municipal comprehensive plans starting in year 2010. The law is a bare bones mandate, with no enforcement procedures spelled out. This seminar will study the experience of courts in several other states with similar plan-empowering consistency statutes and the legal environment in Wisconsin for implementing the mandate. This background knowledge will be used to identify the issues that litigators and courts will face in pursuing court enforcement of the consistency mandate and will consider the need for additional legislation to establish workable methods of enforcement. Weekly class sessions will consider and discuss statutory and case law nationally. In addition, students will write and present research work products on assigned topics.⁷⁶

⁷⁶ University of Wisconsin Law School course description, <http://courses.law.wisc.edu/descriptions/>, Spring 2002.