

Comprehensive Plan Amendments

You have requested the League's formal opinion on the following question:

Question Presented: Can a common council adopt a substantial change (one that affects a land owner's use of his or her property) to the comprehensive plan future land use map against or without a recommendation from the plan commission? You clarify that you are not asking whether the council can vote NO to the plan commission's recommendation to amend the plan and leave the plan unchanged. Rather, the question is whether the council can take an affirmative action to amend the plan against the recommendation of the plan commission.

Brief Answer: No. In my opinion, the statutory language in Wis. Stat. secs. 62.23 and 66.1001 precludes the common council from adopting a substantial change to the comprehensive plan future land use map against or without a recommendation from the plan commission. The basis for my opinion is explained in more detail below.

Facts: I have thoroughly reviewed the facts and all information you provided, but believe it unnecessary to include detailed facts herein since the Question Presented involves statutory interpretation and is a question of law, the answer to which does not turn upon specific facts. However, I do think it's helpful to briefly summarize some historical information to provide context for your question. Before the city adopted its first comprehensive plan in 2009, the then-city attorney opined that the council had no authority to adopt substantive changes to

the comprehensive plan adopted by the plan commission and sent to the council for its action. The city attorney opined that the council's only options were to 1) accept the plan as recommended; 2) accept the recommended plan with non-substantive technical changes; 3) reject the plan; or 4) refer the plan back to the plan commission with a request that it be revised. The city attorney's opinion was based on the statutory language in sec. 66.1001(4)(c), consultation with members of the planning community, and a zoning case.¹ Since 2009, the city has consistently adhered to that same interpretation regarding comprehensive plan amendments.

In the current situation, some members of the common council would like to amend the Future Land Use map to change a particular parcel's designation from High Density Residential to Medium Density Residential allowing a particular number of units per acre. The Plan Commission has not recommended that change. The mayor requested that you opine on whether the council can amend the comprehensive plan against or without the recommendation of the Plan Commission. You agreed with the former city attorney's opinion issued in 2009 based on the language of Wis. Stat 66.1001(4)(c) and the city's longstanding interpretation of that language. You were asked to seek the League's opinion.

Opinion and Discussion:

It is my opinion that the Common Council cannot amend the comprehensive plan other than by adopting, by ordinance, an amendment

recommended by the Plan Commission. Wisconsin Statute sec. 66.1001 governs comprehensive planning in Wisconsin. The statutory scheme divides the power for comprehensive planning between the plan commission and the governing body. Under the statutory scheme, neither the common council nor the plan commission has unilateral authority to adopt or amend a comprehensive plan.

Section 66.1001(1)(a)2 defines "comprehensive plan" as "a guide for the physical, social, and economic development of a local governmental unit" In cities and villages, the comprehensive plan is "a master plan that is adopted or amended under s. 62.23(2) or (3)." Under sec. 62.23, the plan commission is given responsibility for developing and adopting the comprehensive plan. Section 62.23(2) provides that "[i]t shall be the function and duty of the [plan] commission to make and adopt a master plan for the physical development of the city" The master plan must show the commission's recommendations for such physical development, and must contain at least the elements described in sec. 66.1001(2). Section 62.23(2) also authorizes the commission to *amend* the master plan from time to time. Section 66.1001(4)(b) states that the plan commission² may recommend the adoption *or amendment* of a comprehensive plan *only* by adopting a resolution by a majority vote of the entire commission. Similarly, sec. 62.23(3) states that "adoption of the plan or any part, amendment, or addition, shall be by resolution carried by the affirmative votes of not less

1. *Oliveira v. City of Milwaukee*, 2001 WI 27, 242 Wis. 2d 1, 624 N.W.2d 117. *Oliveira* was the basis for the attorney's opinion that the council could adopt the plan commission's recommended plan with non-substantive technical changes.

2. Although sec. 66.1001(4)(b) refers to "the plan commission or other body of a local governmental unit that is authorized to prepare or amend a comprehensive zoning ordinance," it is my opinion that this reference refers to other planning bodies referenced in sec. 66.1001(a)2 for local governmental units other than villages and cities such as, for example, a county planning or zoning committee or commission under sec. 59.69(2) or regional planning commission.

than a majority of all the members of the city plan commission.” After the plan commission adopts or amends the master plan, the plan or amendment goes to the council for its action. Although the statutes empower the commission to amend the comprehensive plan, sec. 66.1001(4)(c) provides, “No comprehensive plan that is recommended for adoption or amendment under par. (b) may take effect until the political subdivision enacts an ordinance ... that adopts the plan or amendment.” Importantly, the enactment of a comprehensive plan by ordinance does not make the comprehensive plan itself a regulation. Sec. 66.1001(2m)(a). Although the comprehensive plan is not a regulation by itself, it is important to note that certain ordinances (e.g., official

mapping ordinances, zoning ordinances, local subdivision ordinances) must be consistent with the local government’s comprehensive plan. Sec. 66.1001(3).

I note that the following language appears on page 13-4 of the city’s comprehensive plan as part of the steps in the process for amending the comprehensive plan:

- Following the public hearing, the Common Council votes to approve or deny the ordinance adopting the proposed Comprehensive Plan Amendment by majority vote of the Council. *The Common Council may make changes to the recommended Plan Commission version of the amendment.* [Emphasis added.]

This language does not alter my conclusion. Where state statutes set forth a specific procedure for enacting and amending a comprehensive plan, a municipality cannot modify the statutory procedure by including language inconsistent with that scheme within its plan.

To conclude, it is my opinion that the statutory scheme governing comprehensive plans does not allow the Common Council to give effect to an amendment to the comprehensive plan that was not recommended for adoption by the Plan Commission.

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