

TOWN OF SHERRY
Wood County, Wisconsin

COORDINATION LAND USE PLAN



Prepared By:
Town of Sherry Citizen Advisory Committee

TOWN OF SHERRY: COORDINATION LAND USE PLAN

Prepared By:
Citizens Advisory Committee

Dick Becker
Bill Czapinski
Sandy Lobner
Jim Mann
Kathy TerMaat

Town Board of Supervisors

David Homb, Chairman
Rosie Ewoldt, Clerk
Linda Haas, Treasurer
Edwin Hetze, Supervisor
Jim Mann, Supervisor

July 10, 2012

Prepared under the provisions of Wisconsin Statutes, Chapter 66.1001
/ Comprehensive Planning
Public Informational Meeting Date: June 25, 2012
Public Hearing Date: July 10, 2012

With assistance from The Foundation for Common Sense, Inc.

TOWN OF SHERRY: COORDINATION LAND USE PLAN

Citizens Advisory Committee Meetings

2010	2011	2012
Education	January 17, 2011	January 5, 2012
August 24, 2010	January 31, 2011	January 12, 2012
September 15, 2010	February 28, 2011 (cancelled - blizzard)	January 18, 2012
October 6, 2010	March 28, 2011 (cancelled - blizzard)	January 25, 2012
October 20, 2010	April 25, 2011	February 1, 2012
November 3, 2010	May 16, 2011	February 8, 2012
November 15, 2010	June 7, 2011	February 22, 2012
November 29, 2010	June 28, 2011	February 29, 2012
December 13, 2010	July 20, 2011	March 7, 2012
	August 30, 2011	March 21, 2012
	November 16, 2011	March 28, 2012
	December 7, 2011	April 5, 2012
	December 14, 2011	April 18, 2012
		April 25, 2012
		April 30, 2012
		May 2, 2012
		May 16, 2012
		May 23, 2012
		June 6, 2012

The Sherry Coordination Plan was prepared in accordance with Wisconsin Open Meetings Law Wis. Stat. § 19.81(1). 2

In order to advance this policy, the open meetings law requires that “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.” Wis. Stat. § 19.81(2). There is thus a presumption that meetings of governmental bodies must be held in open session.

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PREFACE

Chapter 1 of the Wisconsin Statutes contains general principles of law relating to sovereignty and jurisdiction, principles that set forth the public policy of the state regarding the relationship between the various sovereign levels of government. Public policy of Wisconsin, as that of any state, is set by the legislative representatives of the people.

A significant element of that public policy is the recognition of the relationship of local government with state government. The legislature includes in its statements of public policy its intention that the state coordinate with local government. The inclusion of coordination in this critical sovereignty and jurisdiction chapter should make it crystal clear that when the legislature uses the word “coordination” with regard to comprehensive planning and in other statutes; it means to emphasize the importance of local government in the sovereign to sovereign governmental relationships which make up Wisconsin government and law.

In Chapter 1, Section 1.13 the legislature specifically establishes the public policy of the state with regard to land use planning. One of the key elements of that policy is encouragement to all state agencies to coordinate with “nearby units of government,” which in its all inclusive fashion includes “local government.” When the legislature says that an agency is “encouraged” to take action, it is more than just a suggestion; it is a statement of public policy that the agency ought to take to heart. The people of Wisconsin are entitled to have the administrative agencies follow policy set by the legislature, and language of encouragement is certainly expression of policy. The direct statement of policy states that:

“...(2) Each state agency, where applicable and consistent with other laws, is encouraged to design its programs, policies, infrastructure and investments of the agency to reflect a **balance** between the **mission of the agency** and the following **local, comprehensive planning goals**:

(b) Encouragement of neighborhood designs that support a range of transportation choices;

(c) Protection of natural areas, including wetlands, wildlife habitats, lakes, woodlands, open spaces and groundwater resources;

(d) Protection of economically productive areas, including farmland and forests;

...

(g) Encouragement of **coordination and cooperation among nearby units of government**;

...
(k) 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;

...
(m) Planning and development of land uses that create or preserve varied and unique urban and rural communities;

In the above sections the legislature has directed the agencies to the policy of the state that there be coordination between units of government, and that the agencies “balance” their mission under state law with “local” goals---and those goals are related to virtually every function and duty of local government: Support efficient transportation, protect and respect natural resources, protect and support economic stability and social cohesiveness within the uniqueness of the community.

Keep in mind the meaning of the word “coordination”. It is a word of common usage and the dictionary definition provides the common meaning related to equality of rank, not superior and subordinate rank.

Clearly the Wisconsin legislature knows the difference between coordinate and cooperate, because in (2) (g), above, it encourages the agency to balance its mission to make room for “coordination and cooperation” with other units of government. It is obvious that the legislature understands that coordination is different from cooperation because it encourages development of both.

Court decisions make it clear that unless the legislature provides a specific definition of a word of common usage, it intends the common meaning.

Coordination, that is an equal ranking in policy discussions, is called for to make possible the legislative policy stated in subsection 3 of 1.13. There the legislature encourages the agency to administer any law under which “a local government unit prepares a plan” so that it’s planning requirements make it “practical for local governmental units to incorporate those plans into local comprehensive plans prepared under s.66.1001”. Note very clearly that it is not the policy of the state that the state agencies impose its plans and requirements on the local government.

Rather, it is the policy of the state that the agencies make its requirements so consistent with local interests that it would be “practical” for local government to include the state plan into its own!

The remarkable element of this Preface that the upshot as to planning is that the state agencies administer itself in such coordination with local government that the local government would want to include the state agency’s plan into its own. So, the public policy as stated in Wisconsin law is not that the local government be dictated to from above, but that local government decides whether to include in its policy and plan, the plans adopted above.

In Section 1.11 the legislature mandates that as to every “major action” that significantly affects the quality of the “human environment” every state agency must “to the fullest extent possible” prepare an environmental impact statement in accord with the guidelines provided by the Council on Environmental Quality (CEQ) for National Environmental Policy Act (NEPA) studies. The National Environmental Policy Act requires “coordination” between plans prepared by federal, state and local governments.

The legislature could have mandated preparation of environmental impact statements without reference to the National Environmental Policy Act guidelines which are set by the Council on Environmental Quality, but it did not. The importance of the legislative tie to the CEQ guidelines is that the tie brings the state study in line once again with the coordination requirement as to local government.

In subsection (d) of 1.11 the legislature requires that each agency “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” The obvious intention in this mandate is that the environmental study contains alternatives that would resolve inconsistencies caused by conflicts in policy. What “conflicts” are referred to by the legislature? Pretty clearly not conflicts just among staff of the agency because the director of the agency would take care of such conflicts administratively.

Referring back to the provisions of 1.13 which encourage the agencies to promote coordination with local government and to develop their state plans in such a manner that local government will want to include the state plans within their local plans, doesn't it seem relatively clear that subsection (d) refers at least to conflicts that exist between local government policies and state policies?

This reading of the "conflict" language is consistent with what the legislature has provided in Chapter 66, section 66.1001 (2) (g):

...
The element shall identify existing or potential **conflicts between the local governmental unit and other governmental units** that are specified in this paragraph and describe processes to resolve such conflicts."

This language incorporates into Wisconsin law the "consistency" requirement which the federal statutes have included in their definition of "coordination" between federal agencies and local government. It requires that any plan created under Chapter 66 include a description of conflicts—existing or potential---between local government, county government and state government AND THE PROCESS BY WHICH SUCH CONFLICTS CAN BE RESOLVED. That is a mandate for the same process leading toward consistency as mandated by federal statutes.

The consistency process language is included in a paragraph that identifies one of the nine elements that must be included in a Chapter 66 plan. The element is called "Intergovernmental Cooperation", but it includes the same resolution of conflict which is a critical element of "coordination". Regardless of the title of the element, the importance is that the consistency element of "coordination" is made the law of Wisconsin.

SHERRY RESOLUTION

1 **RESOLUTION OF THE TOWN OF SHERRY, IMPOSING ITS AUTHORITY TO COORDINATE**
2 **WITH, AND INSIST ON COORDINATION BY, FEDERAL AND STATE, COUNTY, CITY AND**
3 **VILLAGE AGENCIES (COLLECTIVELY, "STATE," "STATE AGENCIES" OR "LOCAL**
4 **GOVERNMENT") WITH MANAGEMENT, OVERSIGHT OR PLANNING DUTIES REGARDING**
5 **LAND AND/OR NATURAL RESOURCES WITHIN THE JURISDICTION OF THE TOWN OF**
6 **SHERRY.**
7

8 WHEREAS; the Town of Sherry is a unit of local government under Chapter 60 of the Wisconsin Code;
9

10 WHEREAS; applicable provisions of the Constitution, statutes and regulations of the State of Wisconsin
11 authorize the Town of Sherry plan for current and future land and resource uses and authorize the Town to
12 exercise the police powers related to the public health and safety which are customarily reserved to local
13 government;
14

15 WHEREAS; the governing body of Sherry has the responsibility to protect the Town's tax base, protect the
16 public health and safety, to take actions necessary to serve its citizens;
17

18 WHEREAS; in order to protect local authority to act in the best interests of the citizens, the Town must be in a
19 position to represent the citizens in a meaningful way with the federal and "State" agencies and units of
20 government which have management, oversight or planning duties regarding land and/or other natural resources
21 within the jurisdiction of The Town of Sherry. "State" units of government include the state, counties, and cities
22 of all classes, villages, and townships;
23

24 WHEREAS; the governing body of the Town of Sherry engages in local planning regarding current and future
25 land use, natural resource use, roads and highways, and all elements of local authority recognized by Wisconsin
26 law and the 10th Amendment to the United States Constitution, and;
27

28 WHEREAS; proper planning and management of land and/or other natural resources is an ongoing, dynamic,
29 process requiring systematic and continual review and revision, in coordination with units and agencies of
30 federal and state government, to best serve the interests and needs of the citizens of the Town of Sherry in
31 relation to specific needs and circumstances as they may change from time to time, including, but not limited to
32 comprehensive plans adopted by other units of federal and state government;
33

34 WHEREAS; applicable provisions of the Constitution, statutes and regulations of the State of Wisconsin
35 mandating that state, county and local units of government assigned duties relating to management, oversight
36 and planning of use of land and natural resources coordinate with the Town's governing body include, but are
37 not limited to § 1.11, § 1.12, § 1.13, Stats., Land use planning activities; § 16.023(1)(c), Stats., Wisconsin land
38 council; § 16.965, Planning grants to local government units; and § 16.967, Land information program; and §
39 560.04, Stats.; and statutes relating to community planning;
40

41 WHEREAS; the common and ordinarily accepted definition of "coordination" as provided in standard
42 dictionaries and common usage require that the Town of Sherry and those units and agencies of federal and
43 State government required by law to coordinate with the Town be of equal status in the planning process and
44 that plans proposed by such other units and agencies of federal and State government be consistent with those of
45 the Town, and;
46

47 WHEREAS; the federal statutes and regulations relating to management, oversight and planning of use of land
48 and natural resources include, but are not limited to, the National Environmental Policy Act which requires
49 federal agencies to coordinate plans, functions, programs and resource actions with local government (42 U.S.C.
50 Sections 4331(a) and 4332(2); the Federal Land Policy and Management Act (43 U.S.C. Sections 1701 and
51 1712), which requires that the Secretary of Interior coordinate with local government and seek consistency
52 between federal plans and actions and plans, policies and actions established and taken by local government; the

53 National Forest Management Act (16 U.S.C. Section 1604); the Endangered Species Act (16 U.S.C. Section
54 1533); the Intergovernmental Cooperation Act and Presidential Executive Order No. 12372 require federal
55 agencies to coordinate with local government so that local impacts from federal projects can be identified and
56 mitigated; the Homeland Security Act which requires the Secretary to coordinate with local government; and
57 various other statutes and regulations relating to clean water, clean air, wild and scenic rivers, conservation
58 services, regulatory flexibility and recreation opportunities which require coordination as to lessening adverse
59 impact on local government, and quality of data utilized by the federal agencies and state agencies involved in
60 federal projects, and;

61
62 WHEREAS; the Code of Federal Regulations contains regulations issued by the Council on Environmental
63 Quality, the Secretaries of Interior and Agriculture, the Environmental Protection Agency, requiring
64 coordination with local government as to economic and social impacts of federal plans and actions on local
65 government and defining coordination in a manner which gives local government equal status with federal and
66 state agencies and units of government and;;

67
68 WHEREAS; the individual rights and interests of private citizens guaranteed and protected under the
69 constitutions and laws of the United States and the State of Wisconsin, including but not limited to the United
70 States Civil Rights Act which affords relief for denial of due process of law regarding land use actions, are
71 substantially affected by sound land use planning,

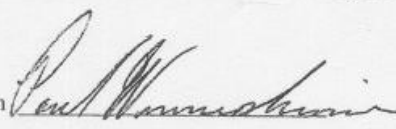
72
73 NOW, THEREFORE, BE IT RESOLVED that the governing body of the Town of Sherry invokes the Town's
74 legal standing and authority to coordinate with, and insist on coordination by units and agencies of federal and
75 state government claiming jurisdiction over lands and/or resources located within the jurisdiction of the Town of
76 Sherry pursuant to the federal and state constitutions, statutes and regulations recited above;

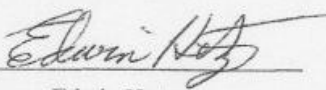
77
78 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to units and agencies of federal and
79 state government claiming jurisdiction over lands and/or resources located within the jurisdiction of the Town
80 of Sherry, to the County of Wood, and to all federal and state elected representatives;

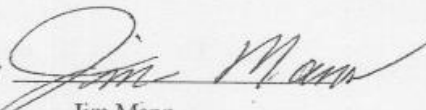
81
82 BE IT FURTHER RESOLVED that the land use plan adopted pursuant to this Resolution shall be a dynamic,
83 continually evolving plan requiring periodic review, assessment, and amendment in coordination with all
84 agencies and units of federal and State government in relation to which the Town invokes coordination pursuant
85 to this Resolution or subsequent Ordinances adopted pursuant to this Resolution and the federal and state
86 constitutions, statutes and regulations recited herein.

87

APPROVED AND ADOPTED THIS 11th day of May, 2010.

Chairman 
Paul Wennesheimer,

Supervisor 
Edwin Hetze,

Supervisor 
Jim Mann

STATE OF WISCONSIN

Town of Sherry

Wood County

SECTION I – TITLE AND PURPOSE

The title of this ordinance is the Town of Sherry Coordination Land Use Plan Ordinance. The purpose of this ordinance is for the Town of Sherry, Wood County, Wisconsin, to lawfully adopt a coordination land use plan to address all nine elements in s. 66.1001 (4) (c), Wis. stats.

SECTION II – AUTHORITY

The Town Board of the Town of Sherry, Wood County, Wisconsin, has authority under its village powers under s. 60.22, Wis. stats., to appoint a town plan citizens advisory committee under ss. 60.62 (4) and 62.23 (1), Wis. stats., and under s. 66.1001 (4), Wis. stats., to adopt this ordinance. The coordinated land use plan of the Town of Sherry must be in compliance with s. 66.1001 (4) (c), Wis. stats., in order for the town board to adopt this ordinance.

SECTION III – ADOPTION OF ORDINANCE

This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the adoption by the town of a land use plan under s. 66.1001 (4), Wis. stats.

SECTION IV – PUBLIC PARTICIPATION

The town board adopted written procedures designed to foster public participation in every stage of the preparation of the land use plan as required by s. 66.1001 (4) (a), Wis. stats.

SECTION V – TOWN PLAN CITIZENS ADVISORY COMMITTEE RECOMMENDATION

The Coordination Land Use Citizens Advisory Committee of the Town of Sherry, by a majority vote of the entire committee, recorded in its official minutes, has adopted a resolution recommending to the town board the adoption of the Town of Sherry Coordination Land Use Plan, which contains all nine of the elements specified in s. 66.1001 (2), Wis. stats.

SECTION VI – PUBLIC HEARING

The Town of Sherry has held at least one public hearing on this ordinance, with notice in compliance with the requirements of s. 66.1001 (4) (d), Wis. stats.

SECTION VII – ADOPTION OF TOWN COORDINATION LAND USE PLAN

The town board, by the enactment of this ordinance, formally adopts the document entitled Town of Sherry Coordination Land Use Plan Ordinance under s. 66.1001 (4) (c), Wis. stats.

SECTION VIII – SEVERABILITY


If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION IX – EFFECTIVE DATE

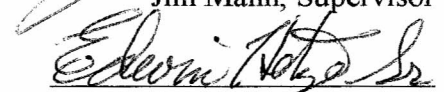
This ordinance is effective on publication or posting.

The town clerk shall properly post or publish this ordinance as required under s. 60.80, Wis. stats. A copy of the ordinance and the plan, shall be filed with at least all of the entities specified under s. 66.1001 (4) (b), Wis. stats.


Adopted this 10th day of July, 2012


Dave Homb, Chairman


Jim Mann, Supervisor


Edwin Hetze, Sr., Supervisor

Attest:


Rosie Ewoldt
Sherry Town Clerk