WISCONSIN 2025 ACT 173

Truth in Planning Law

A tale of terror for municipalities who don't plan for housing growth

October 9, 2026

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Once upon a time…

(pre-Act 173)



THE PLAN

Comprehensive Plans required for municipalities administering zoning, subdivision, and mapping ordinances



THE RULE

Zoning decisions were required to be consistent with adopted plans, but…



THE REALITY

Approvals were not enforced

Proposals consistent with the plan could still be denied and often were

Something wicked this way comes…

(it's Act 173)

Cities and Villages must now map housing growth in their Comprehensive Plan

- Identify residential growth areas over a 20-year horizon
- Each growth area gets a min. and max. density range, broken into 5-year increments

20-year horizon →

Towns & counties: exempt

Years 1–5 min.–max. density	**Years 6–10** min.–max. density	**Years 11–15** min.–max. density	**Years 16–20** min.–max. density

Net density excludes:



Wetlands



100-year floodplains



Publicly owned land not intended for redevelopment

…but that's not all

(new clocks and triggers)

90
DAYS

90-day limit on residential zoning requests

If the applicant asks for an extension, you must grant it

180
DAYS

If your Plan lacks density ranges, you have 180 days to amend

The usual plan-adoption procedures don't apply to this amendment

Which clock runs first?

A request arrives and your Plan lacks density ranges

›

Up to 180 days to add density ranges to your Plan

›

Then the 90-day clock starts

Sequence per the Wisconsin Legislative Council's Act 173 memo

No application needed: your next zoning, subdivision, or official mapping amendment, or a residential annexation, also requires density ranges in your Plan and the Plan's density standards in the ordinance (§ 66.1001(3)(c)1.)

The word that rose from the grave

(“consistent” now means yes)

Residential zoning requests that comply with the plan must generally be approved

“Consistent with” is redefined:

ONLY THESE MAY BE CONSIDERED

- The adopted land use map
- The corresponding land use category descriptions in the Comprehensive Plan

NO LONGER CONSIDERED

Policy text and goals

Also: A rezone which permits additional land uses beyond those identified in the Plan is not inconsistent

Tips from the Devil's Advocate

(Audit the Words, not just the Map)



2025 Act 173 provides updates to Wis. Stat. 66.1001.

> "With regard to the comprehensive plan, in determining consistency under par. (a), only the adopted land use map and the corresponding land use category descriptions in the comprehensive plan may be considered."

Cannot just rely on a lovely map if we have murky or cryptic category descriptions in the comprehensive plan.

- Correct ambiguous density terminology
- Review whether category definitions or terminology are ambiguous, overly broad, or internally inconsistent
- Remove obsolete or unused zoning references
- Ensure internal consistency in tables, narratives, or charts.

The devil (is in the details)

If five conditions are met, a rezoning shall be granted:

I. The plan projects the area for residential use

II. It's adjacent to or near existing development and can reasonably be served by existing infrastructure and services

III. The proposed min/max net density falls within the plan's range for the current 5-year increment (automatically met if your plan still lacks density ranges after your 180 days to amend)

IV. The plan shows housing supply falls short of current demand or forecasted 5-year demand
Must be shown in the plan; your Housing Affordability Report can help

V. The requester certifies in writing the proposal is not in farmland preservation zoning, subject to a farmland preservation agreement, or in an Agricultural Enterprise Area



If all five are met…

…the land is reclassified into the zoning classification the requester specified, if that classification allows the proposed net density

Is there any escape?

(exceptions)



Public facilities or safety

Requests can be denied if you demonstrate it's necessary to prevent a shortage in or overburdening of public facilities, or poses a significant public health/safety threat



Missing densities

Mandate doesn't apply if the request omits their proposed min. and max. net densities



Extraterritorial zoning

Mandate doesn't apply to lands within a city's or village's extraterritorial zoning jurisdiction



The RFP route

If no one responds to a qualifying RFP, the mandate is suspended community-wide for 1 year (next slide)

Tips from the Devil's Advocate

(Surviving the Onslaught)

A qualifying residential rezoning request shall be granted within 90 days UNLESS:

Municipality demonstrates that the denial is necessary to:

- Prevent shortage of public facilities

OR

- Prevent Overburdening of public facilities

OR

- Address significant threat to public health or safety.

Practical Take Away:

- Statute does not take effect until January 1, 2028.
- EXCEPT this language mirrors 66.1002(2)(a)-(b).
  - Shortage – insufficient public-facility to support project demand (like water or sewage)
  - Overburden- development would push facilities beyond capacity (like fire, water, stormwater)
  - Significant Threat- real or specific hazards (traffic analysis, drainage conditions, evacuation)

- **Make an appropriate record!**

The summoning

(RFP exception)

Issue an RFP for a residential development that:

- Can be served by sewer and water and is not environmentally contaminated
- Specifies min/max density ranges consistent with Plan

If no one responds by the deadline…

…the rezoning mandate is suspended community-wide for **1 year**

However, a reply that doesn't propose a project still counts as a response if it comes from someone capable of building one, such as a developer declining due to economic reasons

It’s aliiiiiveeee

(your Comp Plan)

Before:
a boring policy document

- General goals and vision statements
- Future land use map, broadly drawn
- Could support a denial, didn’t force an approval
- Updated when you got around to it

After:
a development rulebook

- Specific residential growth areas
- 5-year planning increments
- Min. and Max. densities per growth area
- Consistent residential zoning requests generally approved

Reading the tea leaves

Under Act 173, density and growth decisions are made in the Comprehensive Planning process

Density is set up front, and your zoning code must catch up at your next amendment

Case-by-case control is lessened

Tips from the Devils' Advocate

(Plan First, Zone Second)

After Act 173: Comprehensive plan identifies where growth should occur → Map and identify density → Developer submits rezone request that fits those parameters → satisfies criteria must approve unless meets a codified exception.

Act 173 frontloads many residential land-use decisions towards the comprehensive-planning process.

1) The Comprehensive Plan will now create scaffolding for future residential zoning decisions.
    - Create a forward looking 20-year projection in 5-year increments identifying net minimum and maximum density.
    - Land use and future use maps provide guidance for future land uses by net density.
2) Zoning Code should follow the plan
    - Ensure existing zoning districts fit within the new comprehensive plan or maps.
    - Misalignment between planned densities within the comprehensive plan and the zoning code creates avoidable conflict and litigation risk.

The specter in the council chamber

(state preemption reaches local legislative decisions)

THEN · 2017 ACT 67

Quasi-judicial: conditional use permits

- Conditions must be reasonable and, where practicable, measurable
- Decisions need substantial evidence, not personal preference or speculation
- Meet the requirements and conditions, and the permit shall be granted

NOW · 2025 ACT 173

Legislative: residential rezonings

- Consistency is judged only by the plan's map and category descriptions
- Conforming residential requests shall be granted within 90 days
- Fail to approve: mandamus, plus court costs and attorney fees

To ponder

If approval is mandatory, is the rezoning still a legislative act?

Has discretion moved upstream, from the hearing room to the plan?

Which legislative land use decisions are next?

The clock is ticking



April 2, 2026
Act 173 enacted

October 9, 2026
Today

2027
UPDATE YOUR PLANS AND CODE

January 1, 2028
Compliance Required

449 days from today until compliance is required on January 1, 2028

Oh, the HORROR!

(Legal risk)



Denials for a residential request are measured against your Plan



Inconsistent decisions are exposed

Applicant may seek mandamus ordering approval; substantial damages or injury are assumed, and court costs and reasonable attorney fees are recoverable



Misaligned zoning code invites trouble

Nightmares on Main Street



The outdated plan

Your land use element hasn't been updated since 2020 and lacks 5-year phased density ranges. January 2028, you receive a residential rezoning request to support a subdivision.

What next?



The lagging code

Your Plan calls for 6–10 units/acre in a growth area for 2030–2035. The available zoning in that growth area permits a maximum of 4 u/ac. You receive an application that meets zoning standards but not the Plan's density ranges.

Now what?



The board who said "no"

You receive a proposal to rezone farmland to low-density residential at 4 units/acre. The Plan identifies this as a growth area with 3–6 units/acre. Neighbors pack the public hearing and express concern over environmental impacts and traffic congestion. The Board denies.

Uh oh?

You won’t make it out alive

(unless you follow these steps)

I. Project housing demand

II. Audit your Land Use element

III. Check infrastructure capacity and audit your Utilities and Community Facilities element

IV. Map residential growth areas and identify density ranges

V. Audit your zoning code

VI. Train decision-makers

VII. Engage your residents

VIII. Build a 90-day approval workflow

The Devil's Advocate

(Fortune Teller's 2027 To-do List)

1. Update the Comprehensive Plan
2. Audit the Zoning Code
3. **Build the Application Workflow**
4. **Train the Decision-Makers on obligations**
5. For each application, prepare the Evidentiary Record
6. Create Standardized Templates for Findings

Also lurking in the crypt

(Act 173 additional TIDbits)



“Newly platted residential development” gets a definition

> *Residential development on a parcel that has not previously been the site of permanent structures other than structures used solely for agricultural purposes*

§ 66.1105(2)(cs)

35%

EXISTING CAP

Mixed-use TIDs cap newly-platted residential at 35% by area of property within project plan

WHAT’S NEW

Residential redevelopment on previously built (non-agricultural) sites isn’t “newly platted,” so it doesn’t count toward the cap

A treat in the bag

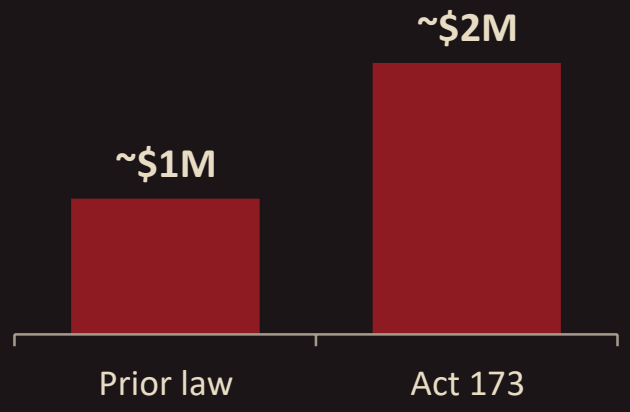
(affordable housing TID extension)

1 → 2

YEARS

Affordable housing TIDs get an extension from 1 to 2 years

Example: a TID generating $1M a year in increment



in housing funds, with no new taxes or debt

How extension funds are used

- At least 75% must benefit affordable housing
- The remaining 25% improves the community's housing stock
- Funds can be spent anywhere in the city or village

Example and use rules: League of Wisconsin Municipalities, Act 173 fact sheet

Questions… if you dare



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