



VANDEWALLE & ASSOCIATES INC.

To: City of Manitowoc
From: Mike Slavney and Jessica Schmiedicke, planning consultants
Date: November 2, 2009
Re: Extraterritorial, Annexation and Intergovernmental Policies

PURPOSE AND BACKGROUND

The purpose of this memo is to review existing extraterritorial, annexation, and intergovernmental policies and provide recommendations for policies and strategies related to these issues in the future.

RECOMMENDED EXTRATERRITORIAL POLICIES

Regarding extraterritorial land division policies, we recommend enhancing the section regarding extraterritorial jurisdiction land division review authority in the City's Subdivision Ordinance (sections 21.03 (4) and 21.04 (2)) to (i) reflect the density policies in the Comprehensive Plan (ii) address the consistency requirement of §66.1001(3) and (iii) reflect current statutory and case law. For example, a municipality is not allowed to deny an ETJ land division based on public improvements (Rice v. Oshkosh and Ritzenthaler v. Baraboo) or layout (Town of Magnolia v. Rock County).

Model language for this section is included below:

Section 66-601: Authority

The City's authority to approve land division and condominium plats within its extraterritorial jurisdiction is granted by sections 236.45(3), and 703 Wisconsin Statutes.

Section 66-602: Extraterritorial Land Division and Condominium Plat Policies

The following policy shall govern the City's approval and regulation of divisions of land within its extraterritorial jurisdiction area in order to promote the intent and those purposes set forth in this chapter:

- (1) No such land divisions will be permitted; without approval of the City, in accordance with the procedures in this Chapter as applicable to land divisions within the City.

- (2) Such land divisions will be permitted if not exceeding an overall density of one (1) dwelling unit for 35 acres, exclusive of the farmstead demonstrated by the land divider to the satisfaction of the City to be existing as of the effective date of this Section. Lots for non-residential use will be handled on a case-by-case basis. The only exception to this policy is that areas shown for development, and not shown in the “Agriculture/Rural” category, on the Future Land Use Map in the City’s Comprehensive Plan may be permitted.
- (3) The minimum lot size within the extraterritorial jurisdiction of the City shall be one (1) acre. A smaller lot size may be allowed if also approved by the respective Town Board. The maximum lot size within the extraterritorial jurisdiction of the City shall be two and one-half (2.5) acres. In all instances, the density provisions of paragraph (2), immediately above, shall also apply.
- (4) The City will attempt to seek consistency between its Plans and locally adopted Town Plans. To the extent that the policies of the City are more restrictive in regard to the protection of the public health, safety, welfare, environmental quality, or in terms of implementing the City’s Comprehensive Plan or Official Map, the City’s policies shall prevail. All land divisions within the extraterritorial limits will be subject to the land reservation or dedication requirements of this Chapter. This specifically means the following:
 - (a) Any public right-of-way area identified in the City’s Comprehensive Plan or Official Map or part of an approved development plan shall be dedicated, or, if beyond the City’s Urban Service Area, reserved in conformance with requirements of this Chapter.
 - (b) Any waterway or storm water management area identified on the City’s Comprehensive Plan or Official Map shall be dedicated in conformance with requirements of this Chapter.
 - (c) If any lands within the land division are within the limits of an environmental corridor, as mapped by the City, County or Regional Plan Commission, the land divider shall record a public open space easement or other arrangement specifying that the development within said environmental corridor shall be consistent with the City’s Zoning Code, or shall label and designate said area as an undevelopable Outlot; at the City’s direction.
- (5) All parklands proposed in adopted elements of the City’s Comprehensive Plan shall be reserved or dedicated to the extent allowed under this chapter.
- (6) Such land divisions shall meet all of the development layout design standards contained in this Chapter.
- (7) Such land divisions shall follow the erosion control requirements established by the City.

- (8) Such land divisions shall pay the required review fees contained in this Chapter prior to initial placement on the Plan Commission agenda.
- (9) The plat, condominium plat, or certified survey map shall include the entire original parcel of land from which any new lots or parcels are created, and a note shall be placed on the face of the plat or certified survey map indicating areas necessary for compliance with the density standard established herein.

Section 66-603: Extraterritorial Land Division Procedures

In addition to the procedures for land divisions within the City Limits, land divisions in the City's Extraterritorial Land Division Jurisdiction shall meet the following requirements:

- (1) In all cases, the time period within which action is required shall not begin until the Town Board, the County, and the City have received all maps, drawings and data required for plat, condominium plat, or certified survey map approval.
- (2) No person shall divide any land located within the City's extraterritorial jurisdiction without first filing an application and paying the City's standard land division review fees. The timing for filing the application and paying the City's review fees shall be the same as otherwise required per land division within the City.
- (3) Submittal requirements for land divisions within the City's Extraterritorial Land Division Jurisdiction shall be identical to those required for land divisions within the City Limits.
- (4) No person shall sell any parcel of land of one acre or less in size within the City's extraterritorial jurisdiction, if it abuts a road that has not been accepted as a public road unless the seller informs the purchaser of that fact in writing, and it is understood that the town or county are not obligated to maintain it.

Section 66-604: Disclosure

No person shall sell any parcel of land of one acre or less in size within the City's extraterritorial jurisdiction, if it abuts a road that has not been accepted as a public road unless the seller informs the purchaser of that fact in writing, and it is understood that the town or county are not obligated to maintain it.

Manitowoc's extraterritorial jurisdiction overlaps with those of Two Rivers and Francis Creek. The Comprehensive Plan recommends establishing a coterminous boundary with both of these communities. There may be cases in which a land division is located in multiple extraterritorial jurisdictions. While State Statutes (s. 66.0105) indicates that each community review their portion of the land division, we would suggest considering intergovernmental agreements so that only one community would review the land division to avoid incompatible regulations and a dual review process for the applicant.

RECOMMENDED ANNEXATION POLICIES

Regarding the City's annexation policies, in general, we recommend that the City consult the Comprehensive Plan when reviewing all annexation requests to determine if development is planned for the area. The Plan Commission and City Council should make findings to support their decisions to either accept or deny the annexation request based on the Comprehensive Plan.

Chapter Nine of the Comprehensive Plan: Implementation, also includes language that allows the City to control the timing of annexations. Specifically, in addition to consistency with the recommendations of the Comprehensive Plan, the City should make a finding or findings on each proposed annexation as to why the proposed timing of annexation is either appropriate or not. For example, although the proposed annexation may be proposed for development that is consistent with the Comprehensive Plan, there may be factors related to road or utility access that make the timing of annexation and/or zoning for development premature.

RECOMMENDED INTERGOVERNMENTAL POLICIES

Regarding intergovernmental policies, the Comprehensive Plan includes a range of recommendations regarding the City's relationship with the County and surrounding communities. We would like to provide further information on intergovernmental boundary agreements with surrounding Towns.

Typically, when Towns support the idea of an intergovernmental agreement, they are thinking of a "Boundary Agreement" which is mainly or solely designed to strictly limit the location, area, and timing of annexations, and/or limitations on the use of extraterritorial powers for zoning, land division, and official mapping. Such agreements contain little motivation for City consideration or adoption, in that few substantial City concerns are addressed.

Therefore, in addition to limits on City annexation, a mutually beneficial intergovernmental agreement should also accomplish important City objectives. Examples include:

- Prohibitions for the Town to seek Charter Town or similar status exempting it from annexations
- A commitment to not compete with the City for urban or suburban development by prohibiting future zoning map amendments to commercial, industrial or residential development over a density of one dwelling per 35 acres with all or portions of the City's extraterritorial area, and/or other mutually-acceptable areas around the City.
- Explicit provisions regarding where and which extraterritorial powers may be used. Where large portions of the City's extraterritorial area conform to the above limitations on zoning map amendments and exurban residential land divisions, there may be little or no need for extraterritorial zoning or land division control. Official mapping objectives for right-of-way or open space dedication would often still remain a priority.

- Language that if for some reason (like prevailing in a lawsuit) the Town is no longer subject to the limitations of the Agreement on rezoning or land division within the extraterritorial area, the Intergovernmental Agreement should automatically cancel any restrictions on use of extraterritorial land division and/or extraterritorial zoning authority.
- Typically, these Agreements are subject to a twenty-year timeframe, with a “rolling renewal” for the next twenty years occurring on a five year cycle.