

Village Powers for Town Boards

Introduction

Town boards obtain greater planning and regulatory *authority* when they are granted village powers by the town meeting, although the grant of such powers does *not require* the town board to do anything. The enactment of the Comprehensive Planning & Smart Growth Law in the 1999 budget act, Wisconsin Act 9, has raised interest in the adoption of village powers because such powers are a prerequisite for establishing a town plan commission and developing a town comprehensive plan. The Wisconsin Towns Association recommends that town boards seek village powers from the town meeting so that towns have the most authority to govern provided by the *Wisconsin Statutes*.

Key Points

- ◆ Annual or special town meeting may *authorize* the town board to exercise village powers.
- ◆ The town board so authorized *may* exercise village powers under ch. 61 (Villages), *Wis. Stats.*, except those village powers “which conflict with statutes relating to towns and town boards.”
- ◆ Under this authority, subject to applicable limitations, the town board may exercise various powers, including
 - “police powers” to regulate for the public health, safety and welfare; and
 - the following land use powers:
 - establishing a plan commission to engage in master/comprehensive planning;
 - enacting a subdivision or other land division ordinance;
 - enacting a town zoning ordinance; and
 - enacting a site plan review ordinance.

1. What powers do all town boards have?

Town boards have the powers that are granted to them by statute and powers that are necessarily implied from the statutory powers.¹ Without village powers, when a town wishes to adopt an ordinance to deal with a local concern, the town must examine whether there is specific or implied authority to adopt the ordinance.

2. How do these town powers compare to the powers of a village board or city common council?

These specific and implied powers of a town board are in contrast to the broader powers exercised by a village board or a city common council. In addition to specific and implied statutory authority, these municipal governing bodies have constitutional and statutory “home

rule” powers.² The constitutional home rule powers are exercised through adoption of a charter ordinance.³ For example, a city may, by charter ordinance, grant its mayor partial veto authority.

Village statutory home rule, found in sec. 61.34(1), *Wis. Stats.*, provides the village board with general authority to act for the good of the community. (See the quoted language under question 3, below). This broad language includes the “police power” authority to adopt regulatory ordinances.

3. What is the statutory authorization of village powers for town boards?

The statutes allow the power of town boards to be broadened through the adoption of village powers. If authorized by the town electors (residents of the town who are U.S. citizens age 18 or older)⁴ at a town meeting,⁵ the town board

may exercise powers relating to villages and conferred on village boards under ch. 61, except those powers which conflict with statutes relating to towns and town boards.⁶

With village powers, the town board may exercise the specific and general powers of a village under ch. 61 (except where these powers conflict with town statutes). An example of specific village powers that a town board may exercise is the comprehensive planning authority, discussed below under question 8.a.

The broad village powers that a town board may exercise are set forth in sec. 61.34, *Wis. Stats.* (mentioned above under question 2). Under this authority, the town board may

...act for the government and good order of the ... [town], for its commercial benefit, and for the health, safety, welfare and convenience of the public...

This authority includes the police power authority to regulate for the town’s health, safety and welfare. Of course, a town’s exercise of specific and general village powers is limited by the language providing that the town board cannot exercise “those powers which conflict” with the town statutes. (This limitation is discussed under question 10, below).

4. How does the town board get village powers?

The town electors, at a special or annual town meeting, may authorize the town board to exercise village powers.⁷ This is done by the adoption of a resolution⁸ (see ## 11 & 12 below). The resolution is considering “continuing,” which means that it stays in effect without need for reauthorization. As a continuing resolution, it may be rescinded at a subsequent town meeting only by the vote of a number of electors equal to or greater than the number who voted to grant the powers.

Sometimes it is not clear whether the town board has been granted village powers. In such cases, the minutes of the annual and special town meetings should be reviewed. The Wisconsin Towns Association staff advises that the town clerk should specify in the town meeting minutes the vote totals for and against the village powers authorization, and further recommends that the clerk should keep a copy of the town meeting minutes in a separate “village powers” folder.

5. Does the granting of village powers change the nature of the town or mandate the town to do anything?

No. By obtaining village powers the town remains a town and does not become a village. The grant of village powers to a town board does not require the town board or town to do anything. There is no mandate attached to the granting of these powers.

6. Does the authorization to exercise village powers take power away from the town meeting or from any town officer or body?

No. Under the statutes, the exercise of village powers by the town board does not diminish or replace the powers of the town meeting or other town officers or bodies. This is because the law provides that the exercise of village powers cannot conflict with statutes relating to towns and town boards. For example, a village board may levy taxes and set the compensation for village offices. The town statutes, in contrast, provide that the *town meeting* levies taxes and sets the compensation for elective town offices.⁹ Therefore, a town board with village powers does not have these particular village powers because the statutes give them to the town meeting. However, the statutes further provide that the town meeting may specifically authorize the town board to levy taxes and set the compensation of elected town officers other than town board supervisors.¹⁰ (The setting of town board supervisor salaries under the statutes is a non-delegable duty of the town meeting.)

7. Why would a town board wish to have village powers?

As stated above, the grant of village powers allows the town board to adopt regulations when there is no explicit or implied town statutory authority to do so. Also, when the authority is in a gray area, village powers bolster the regulation and provide some “insurance” in case the action is challenged in court.

Perhaps most importantly, the adoption of village powers is important for land use and comprehensive planning, discussed next.

8. How do village powers relate to comprehensive planning and land use regulation?

Village powers provide specific authority for a town to operate under the city and village planning law and establish a subdivision or other land division ordinance, and provide general “police power” authority” to regulate for the town’s health, safety and welfare.¹¹

a. Powers under the city & village planning law. A town with village powers may operate under the village planning law, sec. 61.35. This statute in turn provides that villages may operate under the city planning law, sec. 62.23. Village officers and bodies have the same powers and duties specified in sec. 62.23 for the corresponding city officials and bodies. This means that a village may set up a plan commission, develop a master plan or comprehensive plan and set up a zoning board of appeals and engage in zoning under the city law. Town officers and bodies operating under these statutes have the powers of corresponding city and village officers and bodies, but are subject to the limitation discussed below at #10.

i. **Town plan commission.** The town board may, by ordinance, under its village powers set up a town plan commission.¹² This body has planning and related authority in the development of implementation measures and review of proposals affecting land use. (See Fact Sheet #16, “The Town Plan Commission,” and the “Sample Town Plan Commission Ordinance” on the Local Government Center website for detailed information.¹³)

ii. **Master plan/comprehensive plan.** The town plan commission is the town body with the authority to develop and adopt a master plan or comprehensive plan.¹⁴ After adoption by the town plan commission, a comprehensive plan must be sent to the town board for final adoption before it takes effect.¹⁵

iii. **Official map.** The official map is a regulatory tool that allows a community to map proposed expansions of roads and other specified public works and thereby prevent development upon those lands.¹⁶ A town with village powers and a plan commission may make use of this authority.

iv. **Town zoning under village powers.** A town may engage in zoning under the city and village zoning law,¹⁷ subject to the limitations discussed below at #10. Under this authority, the town board would have to establish a town zoning board of appeals (BOA) to hear applications for variances and administrative appeals.

b. Subdivision or other land division ordinance. A community may, by ordinance, exercise broader regulatory authority than is specified in chapter 236 (Platting Land), *Wis. Stats.* This chapter generally allows communities to regulate the “subdivision” of land, which is defined as the creation of 5 or more parcels or building sites of 1 ½ acres each or less by the same division or by successive divisions within a period of 5 years.¹⁸ Under sec. 236.45, a community’s ordinance could, for example, regulate the division of land into 2 or more parcels or lots of 40 acres or less. A town is authorized to adopt a subdivision or other land division ordinance if it has a “planning agency.”¹⁹ A town plan commission under sec. 62.23 meets the definition of a “town planning agency” (as does a town zoning committee under the seldom-used sec. 60.61 town zoning authority).²⁰

c. Land use regulation under general powers. A town with village powers may establish “police power” ordinances to regulate other land use matters, such as the regulation of the storage of junked cars. In addition, the exercise of a town’s authority to review a proposed site plan for an industrial use has been upheld by the courts.²¹ This authority was based on the town’s broad police powers under the village general police powers statute.²²

9. What are some other examples of the use of village powers by town boards?

In addition to the above land use examples, towns, according to the Wisconsin Towns Association staff, have used village powers to: require operators of a proposed landfill to notify the town so the town can get involved in the siting process; require permits for waste haulers; regulate nudity; and bolster specified or implied powers, such as the regulation of signage and driveway access, so that they are less likely to be challenged.

Another example is the expansion of the size of the town board. A town board with village powers may, by ordinance, increase the size of the town board to five supervisors.²³ (Regardless of whether the town board has village powers, the town meeting, in a town with a population of 2,500 or more, may direct the town board to increase the size to five.²⁴)

10. What are the limitations on the exercise of village powers for town boards?

The grant of village powers allows a town board to exercise powers relating to villages and conferred on village boards under ch. 61, *Wis. Stats.*, “except those powers which conflict with statutes relating to towns and town boards.”²⁵ While this limit applies just to towns, local powers, whether exercised by a city, village or town with village powers, are subject to other limitations. In a nutshell, local powers must be reasonable and not conflict with or be preempted by state or federal law.

Town planning and zoning authority under village powers provides a useful example of the limits on town authority. As discussed above, a town with village powers may set up a plan commission and engage in master/comprehensive planning. However, a town with village powers has some, but not all, of the powers exercised by a village because of different statutory procedures applicable to towns. For example, the statutes provide that a town in a county with general zoning must first obtain the approval of the electors to engage in zoning and then must obtain approval of the county board before the town zoning ordinance or any amendment to it may take effect.²⁶ This is in contrast to cities and villages, who may zone without seeking the approval of the county.

Note: Because the exercise of village powers may involve legal interpretation, the Wisconsin Towns Association staff recommends that town boards seek legal advice when proceeding under this authority.

11. What are the specific procedural steps necessary to adopt village powers?

A town meeting to authorize the town board to exercise village powers must follow applicable notice requirements.²⁷ The motion to adopt the resolution must pass by a majority of the electors who vote on the matter.²⁸ (The minutes should reflect the vote totals for and against the authorization of village powers.) The resolution must then be published as a class 1 notice under ch. 985, *Wis. Stats.*, or posted in 3 public places within 30 days of adoption of the resolution.²⁹ The resolution takes effect on the day after posting or publication, unless a later date is specified in the resolution.³⁰

12. How should a resolution on village powers be worded?

Following is a sample resolution for the adoption of village powers:

“Be it resolved that we, the town electors of the Town of _____, _____ County, Wisconsin, being duly assembled at the [annual/special] town meeting on _____, 200_, do hereby authorize the Town Board to exercise village powers pursuant to secs. 60.10(2)(c) and 60.22(3) of the Wisconsin Statutes.”

¹ *Pugnier v. Ramharter*, 275 Wis. 70, 73 (1957); *Adamczyk v. Caledonia*, 52 Wis.2d 270, 273 (1971).

² Art. XI, sec. 3(1), *Wis. Const.*; secs. 61.34(1) & 62.11(5), *Wis. Stats.*

³ Sec. 66.0101, *Wis. Stats.*

⁴ Secs. 60.14(1) & 6.02, *Wis. Stats.*

⁵ Sec. 60.10(2)(c), *Wis. Stats.*

⁶ Sec. 60.22(3), *Wis. Stats.*

⁷ Secs. 60.10(2)(c), 60.11(6) & 60.12(6), *Wis. Stats.*

⁸ Sec. 60.10(2)(intro.), *Wis. Stats.*

⁹ Sec. 60.10(1)(a) & (b), *Wis. Stats.*

¹⁰ Secs. 60.10(2)(a) & (k) & 60.32(1)(b), *Wis. Stats.*

¹¹ Sec. 61.34(1), *Wis. Stats.*

¹² Secs. 62.23(1) & 60.62(4), *Wis. Stats.*

¹³ <http://www.uwex.edu/lgc/program/pubs.htm>

¹⁴ Secs. 62.23(2)-(3) & 66.1001(1)(a), *Wis. Stats.*

¹⁵ Sec. 66.1001(4), *Wis. Stats.*

¹⁶ Sec. 62.23(6), *Wis. Stats.*

¹⁷ Sec. 62.23(7), *Wis. Stats.*

¹⁸ Sec. 236.02(12), *Wis. Stats.*

¹⁹ Sec. 236.45(2)(a), *Wis. Stats.*

²⁰ Sec. 236.02(13), *Wis. Stats.*

²¹ *Town of Grand Chute v. U.S. Paper Converters, Inc.*, 229 Wis.2d 674 (Ct. App. 1999).

²² Sec. 61.34(1), *Wis. Stats.* Note, however, that because the town in the *Town of Grand Chute* case, above, had zoning under village powers, it is not clear whether site plan review is authorized by the town's exercise of village powers alone when the site plan review is not also a part of town zoning or land division review.

²³ Sec. 60.21(1), *Wis. Stats.*

²⁴ Sec. 60.21(2), *Wis. Stats.* Special provisions apply to the Town of Menominee. Sec. 60.21(3).

²⁵ Sec. 60.22(3), *Wis. Stats.*

²⁶ Secs. 60.10(2)(h) & 60.62(2)-(3), *Wis. Stats.*

²⁷ Secs. 60.11(5) & 60.12(3), *Wis. Stats.*

²⁸ Sec. 60.14(2), *Wis. Stats.*

²⁹ Sec. 60.80(1), *Wis. Stats.*

³⁰ Sec. 60.80(3), *Wis. Stats.*

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