

Chapter 7

Zoning Regulations

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INTRODUCTION TO ZONING

Zoning is one of the most common methods of land use control used by local governments. Zoning works by dividing a community into districts, regulating uses that are allowed within those districts, and prescribing allowable dimensions such as lot sizes, setbacks and building height. Zoning can help a community to achieve goals outlined in a comprehensive plan including:

- Protecting public health, safety and general welfare.
- Promoting desirable patterns of development.
- Separating incompatible land uses.
- Maintaining community character and aesthetics.
- Protecting community resources such as farmland, woodlands, groundwater, surface water, and historic and cultural resources.
- Providing public services and infrastructure in an economical and efficient manner.
- Protecting public and private investments.

General Zoning

Local governments in Wisconsin decide for themselves whether or not to adopt general zoning, also known as comprehensive zoning. Authority to adopt general zoning is outlined in state statutes and summarized below:

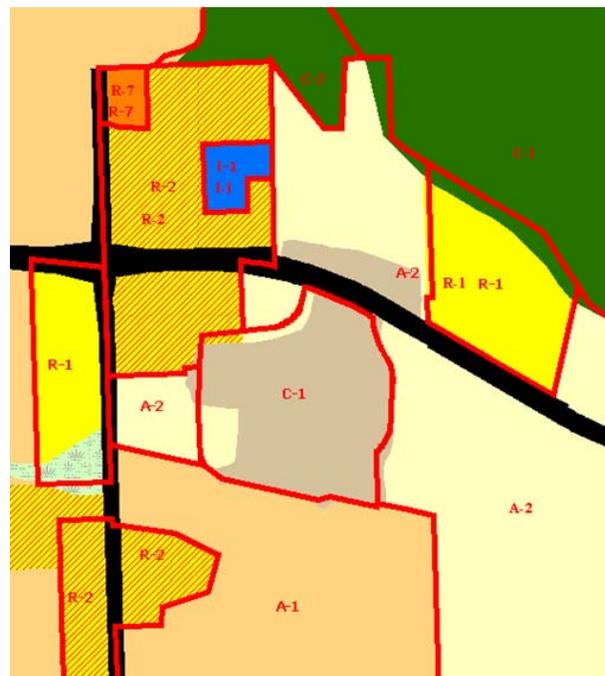
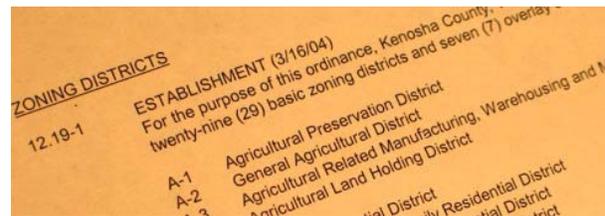
- **Cities and villages** may adopt general zoning which applies to lands within their municipal boundaries.¹ Cities and villages may also adopt extraterritorial zoning which applies to land in surrounding unincorporated areas.²

¹ Wis. Stat. §§ 62.23 and 61.35.

² Wis. Stat. § 62.23(7a). Extraterritorial zoning may be adopted within 3 miles of the corporate limits of a first, second or third class city, or within 1½ miles of a fourth class city or village. A joint extraterritorial committee must approve of extraterritorial zoning ordinances and amendments. The committee consists of 3 members from a city or village and 3 members from each town.

- **Counties** may adopt general zoning which applies to unincorporated land within the county, provided the town adopts the county ordinance.³
- **Towns** may adopt general zoning if they are located in a county without general zoning.⁴ Towns may also adopt general zoning if they are located in a county with general zoning and receive the approval of the county.⁵ Unlike subdivision regulations, county and town general zoning may not apply in the same area.

The zoning ordinance and map describe uses that are allowed within each zoning district.



Images: Kenosha County Department of Planning and Development

³ Wis. Stat. § 59.69.

⁴ Wis. Stat. § 60.61.

⁵ Wis. Stat. § 60.62. In order to exercise this authority, towns must first adopt village powers. The town zoning ordinance *and* subsequent amendments are subject to approval by the county.

► **Additional Forms of Zoning**

Though local communities decide whether or not to adopt general zoning, state statutes require communities to administer certain types of zoning as described below:

- **Shoreland zoning** provides development standards near waterways to protect water quality, aquatic and wildlife habitat, shore cover and natural scenic beauty. Wisconsin statutes require counties to exercise shoreland zoning in unincorporated areas.⁶
- **Shoreland-wetland zoning** generally prohibits or severely restricts development in wetlands near waterways. It has the same objectives as shoreland zoning and is required of counties, cities and villages that have received wetland maps from the state.⁷
- **Floodplain zoning** provides location and development standards to protect human life, health and property from flooding. It is required of counties, cities and villages that have been issued maps designating flood prone areas.⁸

In addition, communities may opt to implement additional forms of zoning such as farmland preservation zoning,⁹ construction site erosion control and stormwater management zoning,¹⁰ and airport approach protection zoning.¹¹

⁶ Wis. Stat. § 59.692; Wis. Admin. Code ch. NR 115. Cities and villages are required to enforce shoreland zoning in areas that were subject to county shoreland zoning prior to being annexed or incorporated. A town may also enforce shoreland zoning provisions provided they are more restrictive than the county.

⁷ Wis. Stat. §§ 61.351 (villages) and 62.231 (cities); Wis. Admin. Code ch. NR 115 (counties).

⁸ Wis. Stat. § 87.30(1).

⁹ Wis. Stat. § 91.30.

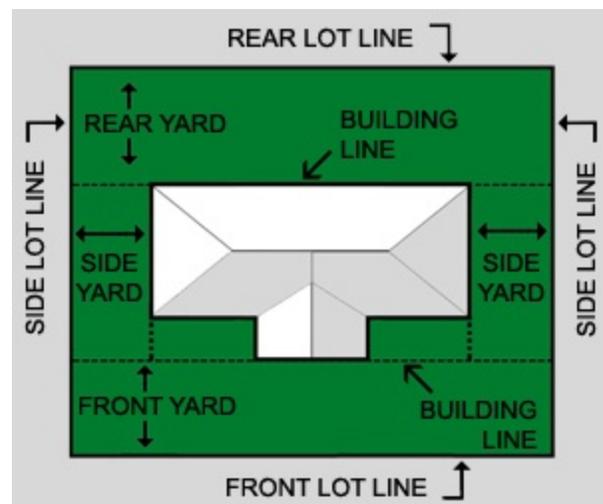
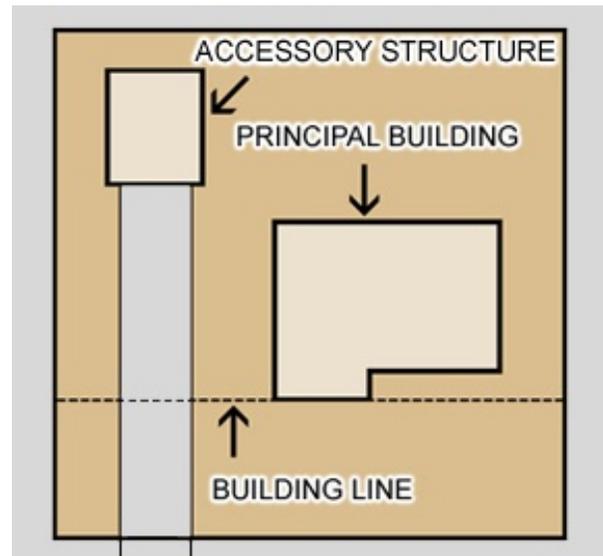
¹⁰ Wis. Stat. §§ 59.693 (counties), 60.627 (towns), 61.354 (villages) and 62.234 (cities).

¹¹ Wis. Stat. § 114.136.

► **Elements of a Zoning Ordinance**

A zoning ordinance contains two legally adopted components: a map (or series of maps) and text. The map divides a community into different zoning districts (such as residential, commercial, industrial and agricultural). The text of the zoning ordinance spells out uniform rules that apply to each zoning district including: uses of the land (permitted, conditional and prohibited uses), dimensional standards (lot size, frontage, setbacks, building height, bulk, floor area), and the density of development.

The text of the zoning ordinance describes dimensional standards for structures and lots within each district.



Images: St. Charles Parish, LA

Zoning Districts

Zoning districts are mapped based on land suitability, avoidance of conflict with nearby uses, protection of environmental features, economic factors such as efficient provision of public services and infrastructure, and other locally determined land use objectives articulated in a community plan. The text describes uniform regulations that apply throughout each district.

Overlay Zones

Some communities adopt overlay zones that apply additional restrictions to designated areas on a map. Examples include shoreland zones, wellhead protection zones, and airport overlay zones. These restrictions apply in addition to the restrictions associated with the base zoning districts.

The standards associated with a base zoning district apply together with any overlay zoning restrictions.

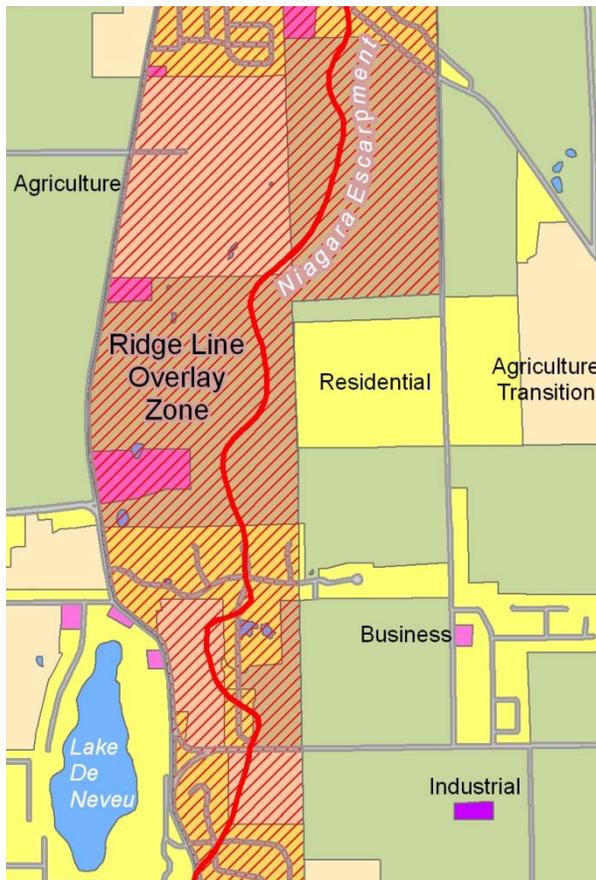


Image: Town of Empire, Fond du Lac County, Critical Areas Overlay

For each zoning district, the ordinance identifies uses that are allowed by right, uses that may be allowed if certain conditions are met, and uses that are not allowed.



Permitted Uses

Each zoning district must provide for permitted uses that are allowed by right throughout the district.¹² An example would be single-family or multi-family homes in a residential district. Permitted uses are authorized by the zoning administrator with a simple permit. Authorization must be granted if the project complies with general standards for the zoning district, any overlay district or design standards, and related building or construction codes.

Some ordinances list uses that are expressly prohibited for a particular district. Uses that are not specifically listed are also prohibited.¹³ If the permitted uses in a zoning ordinance do not allow the use sought by a landowner, they may seek special review of the situation through a conditional use, variance or zoning amendment.

Conditional Uses

Conditional uses may also be listed for each district in a zoning ordinance. A conditional use allows a landowner to put a property to a use which the ordinance expressly permits when specified standards have been met.¹⁴ An example is a daycare facility in a residential district that is allowed subject to parking, fencing and signage requirements.

¹² *Town of Rhine v. Bizzell*, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780.

¹³ *Foresight, Inc. v. Babl*, 211 Wis. 2d 599, 565 N.W.2d 279 (Ct. App. 1997).

¹⁴ *State ex. rel. Skelly Oil Co., Inc. v. City of Delafield*, 58 Wis. 2d 695, 207 N.W.2d 585 (1973).

The decision to grant or deny a conditional use is discretionary and is determined by whether the applicant can meet the conditional use standards contained in the ordinance. Generally, a conditional use must be compatible with neighboring land uses, tailored to meet the limitations of the site, and may not be in violation of the ordinance objectives. If a conditional use permit is granted, conditions may be attached to mitigate potential negative impacts associated with the development. The zoning ordinance should assign review of conditional uses to the governing body, plan commission, or zoning board of adjustment or appeals.

Variances

A zoning variance authorizes a landowner to do something that is not allowed by the zoning ordinance. There are two types of variances: area variances and use variances. An area variance allows a property owner to violate a dimensional requirement of the zoning ordinance (such as a building setback or height limit), whereas a use variance allows a landowner to use a property in a manner that is not specifically authorized for the district. Use variances are generally more difficult to obtain and may be prohibited by the local ordinance. The zoning board of adjustment or appeals reviews variance requests based on criteria outlined in state statutes and case law.

Amendments and Rezonings

Both the zoning map and the text of the zoning ordinance may be updated and amended over time. Two types of amendments are possible and include changes to district boundaries (map amendments) and changes to district regulations such as allowed uses or setbacks (text amendments). A landowner may petition to “rezone” their property from one district to another. Other amendments may be initiated by the governing body, plan commission or staff. The governing body is responsible for adopting and amending the zoning ordinance with input from the plan commission.

Nonconforming Uses, Structures and Parcels

Zoning “nonconformities” are uses, structures or lots that existed legally prior to the adoption or amendment of a zoning ordinance but do not comply with present zoning provisions. Wisconsin law allows the continuation of some nonconforming uses, structures and lots, but does not provide guidance in all situations. As a result, a local zoning ordinance may include provisions to prohibit or otherwise restrict certain classes of zoning nonconformities. Additional guidance and policy options are provided in the Zoning Nonconformities Handbook referenced at the end of this chapter.

Planned Unit Development:

A tool to introduce flexibility in the zoning ordinance

A planned unit development is a mechanism for allowing greater flexibility in the siting and design of development. Planned unit developments provide an opportunity for developers to work with local officials and residents to create a project design that advances the goals of both the community and the developer. These projects often include a mix of land uses (office, retail, residential), intensities (single-family, apartment, townhome), and other special design features.

They may be authorized through a conditional use permit, rezoning or other similar development review process. Regulations that apply to planned unit developments should be described in the text of the zoning ordinance. Specific locations may or may not be mapped.

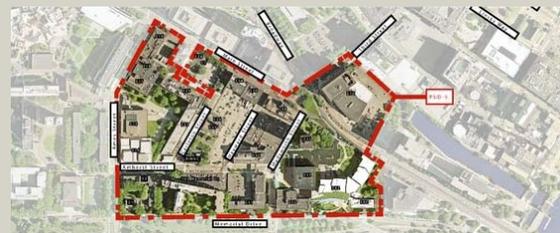


Image: MIT Investment Management Company

ORDINANCE ADOPTION OR AMENDMENT

In Wisconsin, the adoption or amendment of a zoning ordinance is regarded as a legislative act. As a result, local decision-makers have a fair amount of flexibility in crafting and changing zoning ordinance provisions. However, two basic principles must be followed. First, the ordinance must be guided by and consistent with an adopted comprehensive plan.¹⁵ Second, the ordinance may not violate state statutes or the United States Constitution. The U.S. Supreme Court has stated, "a zoning ordinance is unconstitutional when its 'provisions are clearly arbitrary and unreasonable having no substantial relation to the public health, safety, morals or general welfare.'"¹⁶

► General Organization of a Zoning Ordinance

Most zoning ordinances are organized in the following manner:¹⁷

- **Title, Authority and Purpose.** This section lists the state enabling legislation which empowers the community to adopt zoning and outlines the community's "statements of purpose" or reasons for having zoning.
- **General Provisions.** This section includes definitions of terms and describes the area affected by the ordinance.
- **Zoning Districts and Regulations.** This section lists and defines each zoning district and sets out rules that apply to land in each district. These rules may include permitted and conditional uses, the density of structural development, dimensions of structures and setbacks, and provisions for open space.

¹⁵ Wis. Stat. § 66.1001(1)(3) which applies if the ordinance is adopted or amended after January 1, 2010. Consistency is addressed in greater detail in Chapter 6.

¹⁶ *Town of Rhine v. Bizzell*, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780. quoting *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

¹⁷ Michael Chandler and Gregory Dale. "Zoning Basics." *Planning Commissioners Journal*, No. 42. Spring 2001.

Types of Zoning Amendments

There are two types of zoning ordinance amendments:

Map amendments create a new district or change the boundaries of an existing district.

Text amendments create a new district, change the requirements of an existing district or change general ordinance standards.

The term "rezoning" is often used to refer to a request to change the zoning district for a particular piece of property.

- **Zoning Nonconformities.** This section describes limitations associated with nonconforming uses, structures and lots.
- **Impact Regulations.** This section describes parking, landscaping, signage, historic preservation, environmental and other development regulations designed to mitigate the impacts of development.
- **Administration and Enforcement.** This section outlines the duties of those involved in administering the zoning ordinance, specifies procedures for amending the ordinance, and sets fines for zoning violations. Enforcement techniques generally include refusal of building or occupancy permits, remediation, fines and forfeitures, or court action to force compliance.¹⁸ Enforcement actions may be initiated by the governing body or an affected landowner.¹⁹

¹⁸ Zoning decisions may be enforced by a zoning administrator, building inspector, the secretary of the zoning agency, or municipal attorney. Wis. Stat. 59.69 (2)(bm), (10)(b) & (11), 60.61(6) and 62.23(7)(f) & (8).

¹⁹ In cities, villages, and towns with village powers, any adjacent or neighboring property owner who would be specially damaged may sue to enforce the ordinance (Wis. Stat. § 62.23(8)). In counties and towns without village powers, an owner of real estate in the district who is affected by an ordinance violation may sue to enforce the ordinance (Wis. Stat. §§ 59.69(11) and 60.61(6)).

D Process to Adopt or Amend a Zoning Ordinance

The process to adopt or amend a general zoning ordinance is outlined in state statutes and summarized below:²⁰

1. Petition to adopt or amend the zoning ordinance.

The plan commission prepares draft zoning ordinance recommendations, usually with the assistance of legal counsel, an advisory group, zoning staff, or a private consulting firm. A petition to amend the zoning ordinance may be made by a local landowner, the plan commission, or the governing body.

2. Public notice. The clerk publishes a class 2 notice in the community's official newspaper and mails notice to parties in interest as described on page 8. If the proposed ordinance or amendment has the effect of changing the allowable use of the property, the notice must include a map or description of the property affected by the ordinance and a statement identifying where the map may be obtained.

3. Public hearing. The plan commission, governing body or other appropriate body holds a public hearing on the draft zoning ordinance or amendment.²¹ When making significant changes to an ordinance, opportunities for public participation prior to the public hearing are recommended to ensure that the ordinance is understood and accepted by the public.

4. Plan commission recommendation. In response to public comments, the plan commission may modify the draft zoning ordinance or forward it to the governing body with a recommendation for action.²²

- 5. Governing body decision.** The governing body may approve, modify or deny the proposal, or return it to the plan commission with directions to make additional changes. If the proposal is substantially changed, the public hearing process should be repeated.²³ In most cases, a majority vote of the governing body is needed to adopt the ordinance.²⁴ However, an affirmative vote of three-fourths of the governing body is required if landowners opposing the amendment file a valid protest petition.²⁵ Likewise, an affirmative vote of two-thirds of the governing body is required if the owner or operator of an affected airport files a protest petition²⁶ or if the mayor or county executive vetoes the zoning amendment.²⁷
- 6. Publication of ordinance and effective date.** Adopted ordinances and amendments must be published as a class 1 notice and take effect on the day after publication unless otherwise prescribed.²⁸ County zoning ordinances and amendments take effect once approved by the town board and county executive.

²⁰ See Wis. Stat. §§ 59.69(5) counties; 60.61(4) towns; 62.23(7)(d) cities, villages, towns with village powers.

²¹ In municipalities, the public hearing may be held by the governing body, plan commission, or board of public land commissioners (Wis. Stat. § 62.23(7)(d)1). In counties, the public hearing may be held by the county zoning agency (planning & zoning committee or plan commission) or the county board (Wis. Stat. §§ 59.69(5) and (6)).

²² If the governing body of a municipality does not receive a report from the plan commission within sixty days, it may proceed without it (Wis. Stat. 62.23(7)(d)2).

²³ A "substantial change" is one that alters the fundamental character of the original proposal such that it changes the group affected by the proposal or the impact on that group. *Herdeman v. City of Muskego*, 116 Wis. 2d 687, 690, 343 N.W.2d 814 (Ct. App. 1983).

²⁴ Majority means a majority of *all* members of the city council, village board or town board (Wis. Stat. §§ 62.11(3)(b), 62.23, 61.35 and 60.62) or a majority of county board members *present*, unless otherwise provided by law (Wis. Stat. § 59.02).

²⁵ For cities, villages and towns with village powers, the protest must be signed by owners of 20% of the land to be altered, or by owners of 20% of land within 100 feet, or by owners of 20% of land extending 100 feet opposite the street frontage (Wis. Stat. § 62.23(7)(d)2m). For counties and towns without village powers, the protest must be signed and acknowledged by owners of 50% of the land to be altered, or by owners of 50% of the land within 300 feet (Wis. Stat. §§ 59.69(5)(e)5g and 60.61(4)(c)2). County protest petitions must be received by the clerk at least 24 hours prior to the meeting of the county board.

²⁶ Wis. Stat. 59.69(5)(e)5m, 60.61(4)(c)2, 62.23(7)(d)2m.b.

²⁷ Wis. Stat. §§ 59.17(6) and 62.09(8)(c).

²⁸ Wis. Stat. §§ 59.14, 60.80, 61.50, and 62.11(4).

Class 1 Notice – One newspaper publication.

Class 2 Notice – Two newspaper publications, at least once each week for consecutive weeks, the last at least one week before the act or event.

Wis. Stat. 985.01(1m) and 985.07

► Notice Requirements

Advance notice of a hearing to adopt or amend a zoning ordinance must be provided to the following parties:

- **News media.** Notice must be provided in writing or by phone, fax or email to any news media that have filed a written request. Notice must also be provided to the government unit's official newspaper, or if there is no official newspaper, to other media likely to give notice in the affected area.²⁹
- **Adjacent municipalities.** Notice of county zoning amendments must be mailed to the clerk of affected towns at least 10 days prior to the hearing.³⁰ Written notice of the adoption or amendment of a city, village or town zoning ordinance must be provided to the clerk of any municipality located within 1,000 feet of lands affected by the ordinance at least 10 days prior to the hearing.³¹
- **Property owners.** Notice of zoning ordinance adoption and amendment must be provided to property owners that have submitted a written request to receive notice of action affecting their property. Notice may be provided by mail or other agreed upon method, and an appropriate fee may be charged.³²
- **Airport owners.** Notice of a zoning amendment in an airport affected area

must be mailed to the owner or operator of the airport. The airport affected area extends three miles from the boundary of a public airport unless otherwise agreed.³³

- **Military installations.** Written notice of city, village and town zoning ordinance adoption and amendment must be provided to the commanding officer of a military base or installation with at least 200 assigned military personnel or at least 2,000 acres, located in or near the municipality.³⁴
- **Department of Natural Resources.** Written notice of amendments to shoreland, shoreland-wetland, and floodplain zoning ordinances must be provided to the appropriate local DNR office at least 10 days prior to the hearing.³⁵
- **Department of Agriculture, Trade and Consumer Protection.** Written notice of amendments to farmland preservation zoning must be provided to DATCP. This requirement does not apply when land is rezoned out of farmland preservation zoning.³⁶

Conspicuous posting of permit applications on site is recommended to provide public notice and avoid postponement of controversial decisions.



Image: RDK Printing & Signs

²⁹ Wis. Stat. § 19.84.

³⁰ Wis. Stat. § 59.69(5) (e)2.

³¹ Wis. Stat. §§ 62.23(7)(d)1.a & 2.

³² Wis. Stat. § 59.69(5)(f) and 62.23(7)(d)4.

³³ Wis. Stat. §§ 59.69(5)(e)2, 60.61(4)(c)1, 62.23(7)(d)2, 62.23(6)(am)1.b and 66.1009.

³⁴ Wis. Stat. §§ 62.23(7)(d)1.a & 2.

³⁵ Wis. Admin. Code §§ NR 115.05(4)(h) & NR 116.20(2)(c).

³⁶ Wis. Stat. § 91.36(8)(d).

► Town Approval of County Zoning

Towns must approve of a county general zoning ordinance in order for it to take effect in the town. Once approved, a town may only “opt out” of county zoning if the county adopts a comprehensive revision.³⁷ A comprehensive revision means a complete rewriting of the zoning ordinance that includes numerous changes to zoning provisions and the alteration or addition of zoning districts. The town has up to one year to approve the comprehensive ordinance revision. During this time the old ordinance remains in effect.

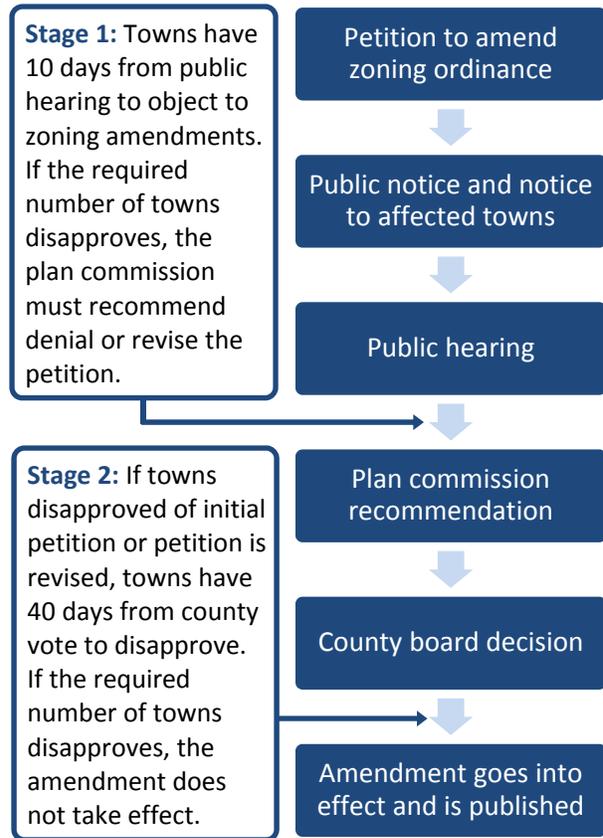
Towns under county zoning also have authority to review and disapprove of zoning amendments but must do so following prescribed procedures.³⁸ In the case of map amendments, individual towns may disapprove if the proposed change falls within the town boundaries. In the case of text amendments affecting multiple towns, a majority of affected towns must disapprove.

Many town boards refer county zoning amendments and other decisions to the town plan commission but retain authority to make a final recommendation to the county. This can complicate scheduling of hearings and delay action by the county zoning agency to the displeasure of petitioners. Some counties and their towns have agreed on timelines and procedures to expedite forwarding of petitions and return of town recommendations.

³⁷ Wis. Stat. § 59.69(5)(d).

³⁸ Wis. Stat. § 59.69(5)(e). Towns may disapprove within 10 days of the public hearing by the zoning agency or file an extension lasting 20 days. Following disapproval, the county zoning agency must deny the request or make changes before forwarding it to the county board. If the county board enacts an amendment that was changed in any way from the original proposal, towns have 40 days to disapprove of the amendment and it may not go into effect. The town must file a certified copy of a town board resolution with the county clerk in order to disapprove of an amendment or request an extension. County shoreland and floodplain zoning ordinances and amendments are not subject to town approval or disapproval.

Veto Authority for Towns under County Zoning



Sample Resolution to Disapprove Amendment

The Town Board of the Town of _____, _____ County, Wisconsin, by this resolution, 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, resolves and orders as follows:

The petition to amend the county zoning ordinance (describe or attach copy of amendment) is timely disapproved. [An extension for disapproving the proposed petition to amend has been filed by the town board with the county clerk.]

Adopted this ___ day of _____, 20__.
Signatures of town board
Signature of town clerk

Adapted from *Wisconsin Town Law Forms*, 59.69(5)(e)3. May 2011. State of Wisconsin.

D Criteria for Reviewing Zoning Amendments

A zoning ordinance, like the comprehensive plan, is not set in stone and will likely need to be updated over time. An ordinance amendment typically results from changing social, economic or environmental conditions, lack of political support for current land use policies, preparation of a new comprehensive plan, or a landowner request to do something other than what is permitted in a zoning district.

When considering a landowner request to rezone a property, it is recommended that local decision-makers follow the rules of procedural due process described in Chapter 2. These rules ensure that decision-makers are impartial, that public input is confined to the public hearing, and that decisions are based on pre-determined standards.

Spot Zoning: Illegal or Not?

Amending a zoning ordinance to zone a relatively small area for uses significantly different than those allowed in the surrounding area is known as "spot zoning." This practice becomes controversial when uses are allowed that are incompatible with the physical limitations of a site or with uses of surrounding properties. However, spot zoning is not always illegal. It may be approved where it is in the public interest and not solely for the benefit of the property owner requesting the rezoning. Spot zoning has been successfully challenged in court where it does not meet these criteria and results in a small uniquely zoned island at odds with the ordinance and plan objectives.³⁹

³⁹ *Cushman v. Racine*, 39 Wis.2d 303, 159 N.W.2d 67 (1968); *Heaney v. Oshkosh*, 47 Wis.2d 303, 177 N.W.2d 74 (1970).

Checklist for Reviewing Proposed Zoning Amendments

Following are some questions to incorporate in the zoning ordinance and consider when reviewing proposed zoning amendments.

	Yes	No
1. Is the request consistent with the comprehensive plan?	_____	_____
2. Does the community need more land in the requested district?	_____	_____
3. Are there other properties in the community that might be more appropriate for this use?	_____	_____
4. Will the request have a serious impact on traffic circulation, parking, sewer and water service, or other utilities?	_____	_____
5. Will the request have a negative adverse impact on property values in the vicinity?	_____	_____
6. Will the request result in lessening the enjoyment or use of adjacent properties?	_____	_____
7. Will the request cause serious noise, odors, light, activity or other unusual disturbances?	_____	_____
8. Will the request result in illegal spot zoning? (i.e. use is inconsistent with surrounding properties and serves only private, rather than public interests)	_____	_____

Adapted from: Daniels, Thomas L., John W. Keller and Mark B. Lapping. *The Small Town Planning Handbook*, Second Edition. 1995. APA: Chicago.

CONDITIONAL USES

A conditional use or special exception is a tool designed to introduce flexibility into the zoning ordinance. For each zoning district, the ordinance will usually describe uses that are allowed by right, uses that may be allowed if specified standards are met, and uses that are prohibited. The second type of use is known as a conditional use, special use or special exception. Exceptions may also be made for minor deviations from dimensional requirements (such as setbacks or height limits), and for specified construction activities (such as filling and grading near navigable waters). Throughout the remainder of the text, these terms will be considered together and referred to as conditional uses.

A conditional use must be specifically listed in the zoning ordinance.⁴⁰ Unlike a permitted use, however, a conditional use is not allowed by right at all locations in a district. Rather, it must undergo special review by the plan commission, governing body, or zoning board to determine if it is appropriate for the site.

Conditional Use or Special Exception?

Wisconsin courts have utilized the terms conditional use, special use, and special exception interchangeably. However, some Wisconsin communities make a distinction.

Conditional use is generally used to refer to specified *uses* of a property that may be allowed under certain circumstances (i.e. gas station, landfill).

Special exception is more commonly used to refer to minor deviations from *dimensional* requirements (i.e. setback, height).

Adapted from: Olson, Daniel M. "Zoning Tools: Conditional Uses and Special Exceptions." *The Municipality*, October 2008. League of Wisconsin Municipalities.

The local zoning ordinance should identify which body has authority to decide conditional use permits.⁴¹ If the governing body is authorized to decide conditional uses, it may request a recommendation from the plan commission.⁴²

► Process for Deciding Conditional Use Permits

The process for deciding conditional use permits should be described in the local zoning ordinance. Common steps are outlined below:

1. **Application for conditional use permit.** The application for a conditional use permit must be complete by the first time that notice is given for the final public hearing on the matter, unless an ordinance expressly allows later submission of information.⁴³ The applicant has the burden of proof of showing that they meet the standards outlined in the local ordinance.⁴⁴
2. **Notice and public hearing.** Because the decision to grant or deny a conditional use permit is quasi-judicial, local decision-makers must follow the rules of procedural due process. Among other things, this means that testimony should be limited to the public hearing, decisions should be based on pre-determined standards, and decision-makers should be impartial. Public notice requirements also apply and are described on page 12.
3. **Decision by governing body, plan commission or zoning board.** The authorized permit review body has authority to grant or deny the permit⁴⁵ based on general or specific

⁴⁰ *Foresight, Inc. v. Babl*, 211 Wis. 2d 599, 565 N.W.2d 279 (Ct. App. 1997).

⁴¹ Wis. Stat. §§ 59.694(1) & (7)(a) and 62.23(7)(e)1 & 7.

⁴² A member of the governing body who serves on the plan commission should not participate in both decisions. *League of Wisconsin Municipalities*, Zoning Caption 445.

⁴³ *Weber v. Town of Saukville*, 209 Wis. 2d 214, 562 N.W.2d 412 (1997).

⁴⁴ *Edward Kraemer & Sons, Inc. v. Sauk County Bd. of Adjustment*, 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

standards laid out in the local zoning ordinance.⁴⁶ These standards often relate to site suitability or compatibility with neighboring land uses due to factors such as noise, odor or traffic. The applicant must demonstrate that the proposed project complies with each standard in the ordinance. The permit review body may impose conditions on development consistent with the ordinance standards and objectives.⁴⁷

4. **Filing and notice of decision.** The decision to grant or deny the permit, including any associated conditions, should be promptly filed in the planning and zoning office and provided to the landowner. A reasonable time limit within which an appeal may be filed should be specified in the local zoning ordinance. If no such provisions are made, the appeal period begins when an aggrieved party finds out about the decision⁴⁸ or is given notice of the decision.⁴⁹

Notice Requirements

Advance notice of meetings or hearings to decide conditional use permits should be provided to the following parties:

- **News media.** Notice must be provided in writing or by phone, fax or email to any news media that have filed a written request. Notice must also be provided to the government unit's official newspaper, or if there is no official newspaper, to other media likely to give notice in the affected area.⁵⁰

⁴⁵ *Village of DeForest v. County of Dane*, 211 Wis. 2d 804, 816, 565 N.W.2d 296 (Ct. App. 1997).

⁴⁶ *Edward Kraemer & Sons, Inc. v. Sauk County Bd. of Adjustment*, 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

⁴⁷ *Rainbow Springs Golf Co. v. Town of Mukwonago*, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40.

⁴⁸ *State ex. rel. DNR v. Walworth County Bd. of Adjustment*, 170 Wis. 2d 406, 414, 489 N.W.2d 631 (Ct. App. 1992).

⁴⁹ *State ex. rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment*, 131 Wis. 2d 101, 117-18, 388 N.W.2d 593 (1986).

⁵⁰ Wis. Stat. § 19.84.

- **Parties in interest.** Notice should be mailed to 'parties in interest' including the applicant, nearby property owners, and others as specified by local ordinance.⁵¹ Many counties provide notice to affected towns, but are not specifically required to do so by statute.
- **Department of Natural Resources.** Written notice must be provided to the appropriate local DNR office at least 10 days prior to hearings for shoreland, shoreland-wetland, and floodplain zoning.⁵²

▶ Attaching and Tracking Conditions

Conditions attached to a conditional use permit should be designed to diminish the adverse impacts of the use on the district. For example, a daycare facility might be allowed as a conditional use in a residential district subject to parking, fencing and signage requirements.

How Do You Develop Conditions?

Conditions are usually developed in one of three ways. They may be:

1. listed in the local zoning ordinance for the district,
2. recommended by zoning staff during the public hearing or in a staff report, or
3. developed by the permit review body at the conclusion of the public hearing.

Permit conditions that are routinely imposed for similar projects should be adopted by ordinance as minimum standards for approval. Incorporating standards in the ordinance allows permit applicants to anticipate and plan for design, location, and construction requirements.

⁵¹ Wis. Stat. §§ 59.694(6) & 62.23(7)(e)6 which apply to zoning boards deciding appeals, variances and conditional use permits. Presumably, the requirements also apply to the governing body or plan commission.

⁵² Wis. Admin. Code §§ NR 115.05(4)(h) & NR 116.20(2)(c).

Conditions must be reasonable and relate to a legitimate regulatory purpose, such as public health, safety or welfare.⁵³ Conditions are generally legal and acceptable provided they meet the following tests:

- **Essential Nexus Test.** The limitation must be designed to remedy a harm to public interests or to address a need for public services likely to result from the proposed development.⁵⁴
- **Rough Proportionality Test.** The limitation must be commensurate with the extent of the resulting harm or need for services.⁵⁵

To assist in monitoring conditional use permits, the plan commission may require compliance reporting as a condition of the permit. Compliance reporting may be requested on a periodic basis or upon transfer of the property. This type of review does not give the plan commission the ability to attach new conditions, unless the permit is revoked due to noncompliance. Therefore, it is important for the plan commission to consider all potential problems associated with the conditional use at the time the permit is issued. An effective means to provide subsequent property owners with notice of permit conditions is with an affidavit recorded with the deed.

Types of Development Standards: Performance vs. Design

When granting a conditional use permit, the permit review body may require the applicant to develop a construction or facility operation plan to meet specified performance standards (i.e. meet with land conservation staff to develop an erosion control plan that contains all runoff/sediment on the site). Performance standards are not unique to conditional uses. General performance and specific design standards are contrasted below:

Performance Standard

Example: Projects may not result in an increase in stormwater discharge which exceeds predevelopment conditions.

- Features:**
- The expected results are stated.
 - The project may be “custom tailored” to the site.
 - It requires more technical expertise to design and evaluate a proposal.
 - It involves more complex project monitoring and enforcement.
 - It provides an opportunity for optimal compliance/performance.

Design Standard

Example: Each lot shall provide 500 cubic feet of stormwater storage.

- Features:**
- Project specifications are stated.
 - It is easy to understand, administer, and enforce.
 - It provides little flexibility and so may result in many variance requests.
 - It may not achieve ordinance objectives in all cases.

⁵³ *Lessard v. Burnett County Bd. of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728.

⁵⁴ *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141, 97 L.Ed.2d 677 (U.S. 1987).

⁵⁵ *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L.Ed.2d 304 (U.S. 1994).

► Time Limits, Modification and Revocation of Permits

Once a conditional use permit is granted, subsequent owners of the property are generally allowed to continue the use subject to limitations imposed in the original permit.⁵⁶ However, there are some exceptions to this rule. Communities may issue a limited-term permit for uses that are temporary in nature, such as a gravel pit or annual concert series. Permits can also be revoked or conditions added if the owner changes the use or violates permit conditions.⁵⁷ Revoking a conditional use permit is not considered a taking without just compensation because a conditional use permit is a type of zoning designation and not a property right.⁵⁸

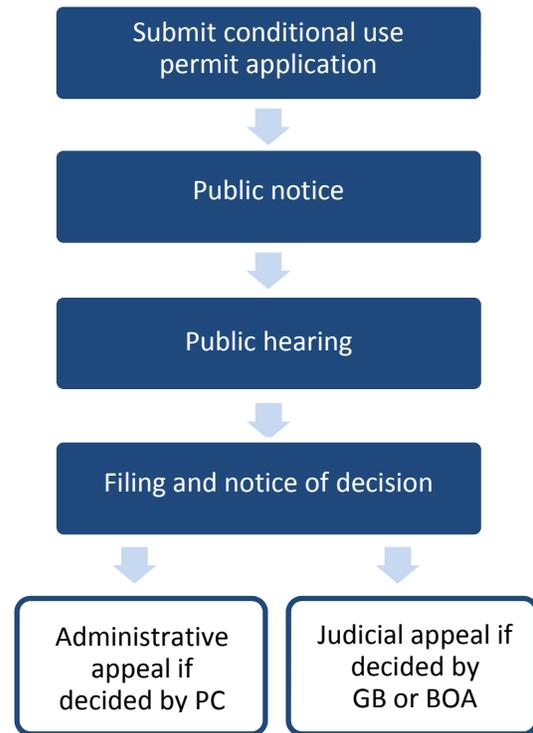
If a zoning code amendment removes the conditional use that was the basis for a permit, the conditional use permit becomes void.⁵⁹ In situations like this, the use is allowed to continue as a nonconforming use. However, the permit conditions are not enforceable.

► Reconsideration and Appeal of Decisions

A person who is dissatisfied with a decision of the plan commission may ask to have their case reheard multiple times hoping for the answer they desire. Courts have found that requests for re-hearings can be denied unless there is a significant change in the project proposal, new information relevant to the decision, or a reversible error in the original process or decision.⁶⁰

Likewise, a person may appeal a decision of the plan commission. Appeal of conditional use decisions is handled differently depending on the body that made the initial decision to grant or deny the permit. The diagram below shows the relationship between the initial decision-making body and the appropriate appeal body. Conditional use decisions of the plan commission are appealed to the zoning board of adjustment or appeals, unless the ordinance provides an alternate mechanism of appeal to the governing body.⁶¹ Conditional use decisions of the governing body or zoning board are appealed directly to circuit court.⁶²

Conditional Use Permit Application and Appeals



PC – Plan Commission, GB – Governing Body, BOA – Board of Adjustment/Appeals

⁵⁶ See Rohan, *Zoning and Land Use Controls*, sec. 44.01[4], p. 44-18, and Anderson, *American Law of Zoning* 3d, vol. 3, sec. 21.32, p. 754-5.

⁵⁷ Action may be taken following notice and a public hearing. *Hartland Sportsman’s Club v. Town of Delafield*, 35 F.3d 1198 (7th Cir. Wis. 1994) and *Bettendorf v. St. Croix County Bd. of Adjustment*, 224 Wis. 2d 735, 591 N.W.2d 916 (Ct. App.1999).

⁵⁸ *Rainbow Springs Golf v. Town of Mukwonago*, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40.

⁵⁹ *Hussein v. Village of Germantown Bd. of Zoning Appeals*, 2011 WI App 96, 334 Wis. 2d 764, 800 N.W.2d 551.

⁶⁰ *Tateoka v. City of Waukesha Bd. of Zoning Appeals*, 220 Wis. 2d 656, 583 N.W.2d 871 (Ct. App. 1998);

Goldberg v. Milwaukee Bd. of Zoning Appeals, 115 Wis. 2d 517, 340 N.W.2d 558 (Ct. App. 1983)

⁶¹ *League of Woman Voters v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983); *State ex. rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adj.*, 131 Wis. 2d 101, 388 N.W.2d 593 (1984).

⁶² *Town of Hudson v. Hudson Town Bd. of Adjustment*, 158 Wis. 2d 263, 461 N.W.2d 827 (Ct. App. 1990); *Magnolia Twp. V. Town of Magnolia*, 2005 WI App 119, 284 Wis. 2d. 361, 701 N.W.2d 60.

APPEAL OF ZONING DECISIONS

Applicants and other specified parties that are dissatisfied with a zoning decision may file an appeal within time limits specified by state statutes and local ordinance. The appeal process varies based on the type of decision being appealed and the body that made the original decision.

► Administrative Appeals

Decisions of the zoning administrator, such as the granting of a simple zoning permit, the interpretation of a zoning ordinance, the accuracy of measurements, or the authority of a zoning official to make a decision are appealed to the zoning board of adjustment or appeals. Conditional use decisions of the plan commission are also appealed to the zoning board as an administrative appeal, unless the ordinance provides an alternate mechanism of appeal to the governing body.⁶³

Any “aggrieved” person and any officer, department, board or bureau of the municipality affected by an administrative decision of a zoning officer may appeal the decision within a “reasonable” time period determined by the board.⁶⁴ If a time limit is not specified in the local zoning ordinance or by board rules, the appeal period begins when the aggrieved party finds out about the decision or has notice of the decision.⁶⁵ An aggrieved person is one whose legally protected interests are affected by the decision.

When hearing an appeal, the zoning board should review the record of proceedings before it and may take new evidence.⁶⁵ The board has all of the powers of the decision-

maker whose decision was appealed and may reverse, affirm or modify the original decision or issue or direct that a permit be issued. The applicant has the burden of proof of demonstrating that the administrative decision was incorrect or unreasonable.

► Judicial Appeals

Decisions of the zoning board, including variances, conditional uses and administrative appeals, may be appealed to circuit court. Any aggrieved person, taxpayer, officer, or body of the municipality may seek certiorari review within 30 days of filing the decision in the office of the zoning board.⁶⁷

Decisions of the governing body, such as acting upon a permit application or choosing the procedure to follow in considering an ordinance may also be appealed to circuit court. Any party to the proceeding may seek certiorari review within 30 days of being notified of the final decision.⁶⁸

In a certiorari action, the court will review the record using the standards described on page 16. It may affirm, reverse or modify the decision appealed in whole or in part. If a decision is overturned, the court may “remand” or send the case back to the original decision-maker with instructions for further proceedings.

For More Information

Additional information on appealing administrative and quasi-judicial decisions may be found in Chapters 13 and 17 of the Zoning Board Handbook. The Handbook is available on the Center for Land Use Education website at:

www.uwsp.edu/cnr-ap/clue/Pages/ZoningHandbook.aspx

⁶³ *League of Woman Voters v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983); *State ex. rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adj.*, 131 Wis. 2d 101, 388 N.W.2d 593 (1984).

⁶⁴ Wis. Stat. §§ 59.694(4) and 62.23(7)(e)(4).

⁶⁵ *State ex rel. DNR v. Walworth Co. Bd. of Adj.*, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992); *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson Co. Bd. of Adj.*, 131 Wis. 2d 101, 388 N.W.2d 593 (1986).

⁶⁶ Wis. Stat. § 59.694(8); *Osterhues v. Bd. of Adj. for Washburn Co.*, 2005 WI 92, 282 Wis. 2d 228, 698 N.W.2d 701.

⁶⁷ Wis. Stat. §§ 59.694(10) & 62.23(7)(e)10.

⁶⁸ Wis. Stat. § 68.13.

Certiorari Review Standards

The following standards are used by courts to review local land use decisions on certiorari.⁶⁹ These points provide an excellent checklist that can be used by plan commission members and other local land use decision-makers to judge the overall quality and defensibility of their decisions.

	Questions the court will ask when reviewing local decisions	Tips to help local decision-makers comply with the standard
1. Jurisdiction	Did the body have the authority to make the decision?	<ul style="list-style-type: none"> For each hearing, ensure that the geographical location and type of decision is within the jurisdiction of the body.
2. Proper procedures	Did the body follow proper legal procedures?	<ul style="list-style-type: none"> Ensure that public notice and open meeting laws are followed as well as other procedures specified in local or state codes.
3. Proper legal standards	Did the body follow the proper legal standards?	<ul style="list-style-type: none"> Ensure that decisions are based on standards found in local ordinances, state statutes and case law.
4. Unbiased decision-makers	Was the action arbitrary, oppressive or unreasonable, and representative of its will and not its judgment?	<ul style="list-style-type: none"> Ensure that decision-makers are unbiased and recuse themselves from decisions that present a conflict of interest or appearance of bias. Make sure the decision explains the reasons why each decision standard was or was not met.
5. Substantial evidence	Could a fair and reasonable person have reached the same conclusion based on the facts in the record?	<ul style="list-style-type: none"> Make sure all evidence, including that from site inspections, is included in the record.⁷⁰ Explain how the evidence showed why each decision standard was or was not met.

⁶⁹ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401; *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514; *Nielsen v. Waukesha County Bd. of Supervisors*, 178 Wis. 2d 498, 511, 504 N.W.2d 621 (Ct. App. 1993); *Lamar Central Outdoor v. Bd. of Zoning Appeals*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87.

⁷⁰ The record is the compilation of all evidence that was presented to the decision-making body, including applications, written comments, other documents, and oral testimony, as well as the record of the proceedings, deliberations and decision. Additional guidance on drafting land use findings and constructing an adequate record is provided in Chapters 2 and 6.

Legislative enactments, such as the adoption or amendment of a zoning ordinance may also be challenged in circuit court. The most common method of challenging the validity of a zoning ordinance is an action for declaratory judgment.⁷¹ An action for declaratory judgment is typically made when the party claims constitutional violations, such as equal protection, procedural due process or substantive due process. A party can also make a claim for monetary damages due to inverse condemnation if they believe their property was “taken” by regulatory or legislative action. Monetary relief can also be requested if the party claims they have been damaged by a governmental entity violating their federal constitutional rights.⁷²

When a party files for declaratory judgment, they are asking the court to review the circumstances of their claim and “declare” a correct application of the law. In order to have “standing” to sue in a declaratory judgment, a party must have a personal stake in the outcome and must be directly affected by the issue in controversy. The party must have sustained, or will sustain, some pecuniary loss before he or she has standing. A person’s status as a taxpayer, property owner, or one who disagrees with a municipal decision does not confer standing.⁷³

The concept of separation of powers causes courts to defer to legislative action. In order to successfully maintain a challenge to the constitutionality of an ordinance, the party must prove their case beyond a reasonable doubt.⁷⁴ However, when the ordinance concerns the exercise of a First Amendment right, such as religious land uses, adult uses, or billboards, the burden of proof reverses.⁷⁴

⁷¹ Rathkopf. *The Law of Zoning and Planning* § 35.01[1] at 35-2 (1980). See also Wis. Stat. § 806.04.

⁷² 42 USC § 1983.

⁷³ *Lake Country Racquet & Athletic Club. v. Hartland*, 2002 WI App 301, 259 Wis. 2d 107, 655 N.W.2d 189.

⁷⁴ *Town of Rhine v. Bizzell*, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780.

Although a court may differ with the wisdom of the zoning authority, it cannot substitute its judgment for that of the local authority. Therefore, the court must uphold a local zoning decision unless it finds an error of law, excess of power, or abuse of discretion. This rule applies not only to the necessity and extent of zoning but also to the classification and establishment of districts, boundaries and uses, and to the determination of whether or not there has been a change of conditions to warrant a rezoning.⁷⁶

In reviewing a declaratory action, the court may rule for or against the party. The losing party may appeal the decision to the Court of Appeals. In rare cases, a decision may be heard by the Wisconsin Supreme Court, either directly or following review by one of the lower courts.

Claims against Governmental Bodies

A landowner, occupant or other person affected by a county zoning ordinance or amendment may contest the validity of the ordinance on procedural grounds within 180 days.⁷⁷ Certain other claims against governmental bodies require a notice of injury and notice of claim to be filed with a local government official within 120 days of the event giving rise to the claim.⁷⁸ The governmental body has 120 days to act on the claim and if disallowed, the claimant has six months to bring suit. Local government officials are exempt from this provision when acting in a legislative or quasi-judicial function. Annexation challenges,⁷⁹ open meetings law and public records law challenges,⁸⁰ and federal constitutional challenges⁸¹ are also exempt.

⁷⁵ *Fond du Lac County v. Mentzel*, 195 Wis. 2d 313, 320, 536 N.W.2d 160, 163 (Ct. App. 1995).

⁷⁶ *Buhler v. Racine County*, 33 Wis. 2d 137, 146-47, 146 N.W.2d 403 (1966).

⁷⁷ Wis Stat §§ 59.69(14) and 893.73(1).

⁷⁸ Wis Stat §§ 893.80.

⁷⁹ *Town of Burke v. City of Madison*, 225 Wis. 2d 615, 626, 593 N.W.2d 822, 826 (Ct. App. 1999).

⁸⁰ *Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 547 N.W.2d 587 (1996).

⁸¹ *Thorp v. Town of Lebanon*. 2000 WI 60, 235 Wis. 2d; *Felder v. Casey*, 487 U.S. 131 (1988).

RECOMMENDED RESOURCES**General Zoning**

Zoning Board Handbook for Wisconsin Zoning Boards of Adjustment/Appeals. 2nd edition. 2006.

Lynn Markham and Rebecca Roberts. Center for Land Use Education. Available online:
www.uwsp.edu/cnr-ap/clue/Pages/ZoningHandbook.aspx

Zoning Nonconformities. 2005. Lynn Markham and Diane Milligan. Center for Land Use Education. Available online: www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/Zoning.aspx

Guide to Community Planning in Wisconsin, Chapter 6: Zoning. 1999. Brian Ohm. University of Wisconsin-Madison/Extension. Available online:

www.lic.wisc.edu/shapingdane/resources/planning/library/book/contents.htm

The full text of Wisconsin's zoning laws can be found in *Wisconsin Statutes* §§ 59.69-698 (counties), 60.61-65 (towns), 61.35-354 (villages) and 62.23-234 (cities) and may be accessed online: <https://docs.legis.wisconsin.gov/statutes/prefaces/toc>.

Shoreland Zoning

Wisconsin Shoreland Zoning Revision Guidebook. 2011. Wisconsin County Code Administrators. Available online: www.ncwrpc.org/NRI15

Land Use and Wetlands: Zoning Opportunities to Improve Wetland Protection. 2011. Wisconsin Wetlands Association. Available online: www.wisconsinwetlands.org/localgovs.htm

Wisconsin Water Law: A Guide to Water Rights and Regulations. 2001. Paul G. Kent and Tamara Dudiak. Available from UW-Extension Publications at (877) 947-7827 or online: <http://learningstore.uwex.edu/Assets/pdfs/G3622.pdf>

Model Ordinances

Model Zoning Ordinance for Rural Cluster Development. 2002. Southeastern Wisconsin Regional Planning Commission. www.sewrpc.org/SEWRPCFiles/CommunityAssistance/ModelOrdinances/cluster_ordinance.pdf

Model Ordinance for Traditional Neighborhood Development. 2001. University of Wisconsin-Extension. <http://urpl.wisc.edu/people/ohm/tndord.pdf>

Model Shoreland Zoning Ordinance. 2010. Wisconsin Department of Natural Resources. <http://dnr.wi.gov/waterways/shoreland/local.htm>

Model Shoreland-Wetland Zoning Ordinances for Cities and Villages. No date. Wisconsin Department of Natural Resources. <http://dnr.wi.gov/waterways/shoreland/local.htm>

Model Floodplain Zoning Ordinance. 2012. Wisconsin Department of Natural Resources. <http://dnr.wi.gov/org/water/wm/dsfm/flood/communities.htm>

SAMPLE ZONING DOCUMENTS

Sample Development Guide

CITY OF JANESVILLE



ZONING DISTRICTS

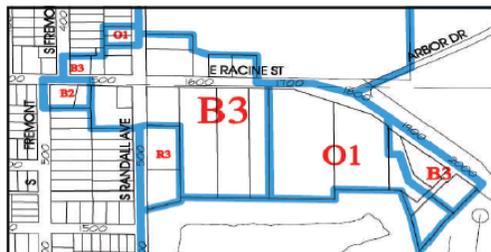
What is Zoning?

Regulating the use of land in the City of Janesville is important to ensure incompatible land uses are avoided and potential impacts of other land uses are limited. Zoning is accomplished by designating zoning districts to different parts of the City. Within each zoning district, certain land uses are permitted. The Zoning Ordinance lists the uses permitted in each district along with other requirements such as minimum lot size, building setbacks and maximum building heights. To find out more about the City’s Zoning Ordinance, visit www.ci.janesville.wi.us or call (608) 755-3085.

To find out what your property is zoned, visit <http://gis.ci.janesville.wi.us>. This interactive mapping site will allow you to search for your property and determine its zoning classification.

Zoning Districts

- | | |
|---------------------------------------|---|
| R1—Single-Family Residence District | M1— Light Industrial District |
| R1D—Two-Family Residence District | M2— General Industrial District |
| R2—Limited General Residence District | M3— Central Light Industrial District |
| R3—General Residence District | M4— Central General Light Industrial District |
| R3M—Medium Density Residence District | |
| R4—Central Residence District | |
| O1—Office/Residence District | <u>Special Districts</u> |
| O2—Central Office/Residence District | Agriculture District |
| O3—Neighborhood Office District | Mining District |
| B1—Neighborhood Convenience District | Conservancy |
| B2— Community Shopping District | Parking Overlay District |
| B3—General Commercial District | Historic Overlay District |
| B4—Business Highway District | Floodplain Overlay District |
| B5—Central Office District | Airport Overlay District |
| B6— Central Service District | |





REZONING (ZONING MAP AMENDMENT)

What is the Purpose of a Rezoning Amendment?

The zoning amendment (rezoning) provides a process which allows an individual to request a change in the zoning classification on land.

Who may Initiate a Rezoning Amendment?

A rezoning amendment may be proposed by the City Council, the Plan Commission, the Zoning Board of Appeals, or any interested person or organization. A rezoning amendment is usually submitted by the property owner, contract purchaser, proposed tenant or lease holder.

How Long Does the Process Take?

Typically, an application takes 5-7 weeks for final action from the date of applying for a zoning change.

What is the Application Fee?

The fee for rezoning of a property to R1, R2, Conservancy, or Agriculture is \$300. The fee for rezoning to Multi-Family, Office, Commercial, or Industrial is \$500, however, sites with 10 or more acres will be charged an additional \$50 per acre, not to exceed \$1,000.

Rezoning Steps:

1. **Pre-application Meeting**—Prior to application for a rezoning, the applicant should meet with the Community Development Department to discuss the zoning change.
2. **Submit a Rezoning Application** and fee. The applicant may file the completed application with the Community Development Department together with the required fee.
3. **City Council** - The application is presented to the City Council and subsequently referred to the Plan Commission.
4. **Plan Commission**—The Plan Commission schedules its public hearing on the proposed amendment.
5. **Public Notification**—All property owners within 400 feet of the property being rezoned and all tenants adjoining or directly opposite the subject property will be notified by mail of the Plan Commission and City Council public hearing dates. A legal notice is also published in the newspaper to announce the public hearing and requested action.
6. **Staff Report**—Within the week preceding the public hearing, Community Development Staff prepares a report and recommendation (with or without conditions) on the application and forwards copies to the applicant and Plan Commission members.
7. **Plan Commission**—At the scheduled meeting, Staff will present the request and the recommendation. The Plan Commission may ask questions of Staff, followed by the public hearing, at which time the applicant and interested parties may speak to the Commission. After the public hearing is closed, the Plan Commission may discuss the proposal and vote to forward a recommendation (favorable or for denial) to the City Council.
8. **City Council**—The City Council holds a public hearing and acts to approve or deny the ordinance rezoning the property. The City Council is the final authority for zoning amendments.
9. **Final Notification**—The applicant is notified in writing of City Council action.

CITY OF JANESVILLE



CONDITONAL USE PERMIT

What is a Conditional Use?

The Zoning Ordinance lists uses for each zoning district which include permitted and conditional land uses. A permitted use is permitted by right and can be established within the zoning district for which it is listed if all zoning and other city code requirements are satisfied. Conditional uses are only allowed following review and approval by the City Plan Commission. Conditional uses are uses that, because of their unique or varying characteristics, are not appropriate as a permitted use without consideration in each case of the impact of the location and layout of the use upon neighboring land and of the public need for the particular use at the particular location.

Who May Apply?

An application for a conditional use permit may be proposed by the owner of land upon which a conditional use is desired or by a contract purchaser or lease holder who wishes to establish a conditional use on the property. The application must be signed the property owner.

What is Required for Application?

A Conditional Use Permit Application may be filed with Community Development (refer to page [26](#)). The application must be accompanied by the requisite filing fee, a site plan and a written statement by the applicant and evidence showing that the proposed conditional use shall conform to the standards set forth below. The site plan shall include the location of new and existing buildings, parking areas, green area, building setbacks, curb openings, screenings, trash area location, drainage, etc For more detailed information regarding site plan review requirements and process, refer to page [13](#).

The Plan Commission must find that all the following conditions have been met prior to granting any conditional use:

1. That a review has been conducted and recommendations made by a Site Plan Review Coordinator.
2. That the uses, value, and enjoyment of other property in the neighborhood for purposes already permitted shall not be substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads and drainage have been or are being provided.
5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the streets.
6. That the site for the proposed use is adequate in size and shape to accommodate said use.
7. That the conditional use shall conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the Plan Commission.

How Long Does the Process Take?

The time required to review and act upon a conditional use permit varies. Typically, action on a well prepared application and site plan can be completed within 4-6 weeks.



CONDITONAL USE PERMIT (cont.)

What is the Fee for a Conditional Use Application?

Less than 10,000 square feet of building area or 1 acre of land	\$500
10,000 to 25,000 square feet of building area or 1 to 5 acres of land	\$1,000
Greater than 25,000 square feet of building area or 5 acres land	\$1,500
Conditional Use Amendments	\$350

Conditional Use Steps:

1. **Pre-application Meeting**—Prior to filing an application, it is advised that the applicant meet with a Community Development staff member regarding the desired conditional use. A sketch of the site plan of the proposed conditional use should be provided at that time.
2. **Submit Application(s) and Fee(s)**—The applicant may file the completed application(s) with Community Development together with the required fee(s).
3. **Site Plan Review**—The site plan and applicable plans are submitted to the Site Plan Review Coordinator for review and recommendation. Refer to page [13](#) for a detailed list of what is to be expected to be submitted.
4. **Plan Commission**

Meetings: Plan commission meetings are held on the first and third Mondays of each month or by special exception. Your request will be placed on two Plan Commission agendas. At the first meeting, the proposal will be set for public hearing. Generally, this is not a meeting that you need to attend. The second meeting is usually 2 weeks later and includes a public hearing. It is important that you or a representative attend the second meeting.

Notice of Public Hearings: 10 days prior to the second meeting, a public hearing notice will be sent to all owners of property located within 400 feet of the subject property. In addition, notices will be mailed to tenants occupying properties which are immediately adjacent or directly opposite the subject property. Legal notice will also be published in the local newspaper to announce the public hearing and requested action.

Staff’s Report: The week before the public hearing, you and the Plan Commission members will receive a copy of the Department’s staff report. The report is prepared in order to present and make recommendations pertaining to your request to the Plan Commission. If a site plan review is a prerequisite to the conditional user permit, the site plan review letter will be attached to Staff’s report.

Plan Commission Procedure: On the night of your public hearing, Staff will present your request to the Commission and make a recommendation for approval (with or without conditions) or for denial. The Plan Commission may ask questions of Staff and then open the public hearing, at which time you and any interested parties may speak to the Commission. After the public hearing is closed, the Plan Commission may discuss the proposal. In most cases, a decision is made at this meeting; however, action could be postponed and the public hearing continued to a future meeting if the Plan Commission chooses.

Decision: After consideration of all written documentation, testimony, discussion and Staff’s recommendations, the Plan Commission will review your request against the 7 ordinance standards which are listed under [“What is required for application?”](#). A final vote by the Commission will either approve, conditionally approve or deny your request. A tied vote results in automatic denial.

Sample Rezoning Application

**PETITION FOR CHANGE TO CHAPTER 15, ZONING,
OF THE CODE OF ORDINANCES
OF THE CITY OF LA CROSSE

AMENDMENT OF ZONING DISTRICT BOUNDARIES**

Petitioner (name and address):

Owner of site (name and address):

Address of subject premises:

Tax Parcel No.: _____

Legal Description: _____

Zoning District Classification: _____

Proposed Zoning Classification: _____

Is the property located in a floodway/floodplain zoning district? ___ Yes ___ No

Is the property/structure listed on the local register of historic places? ___ Yes ___ No

Is the Rezoning consistent with Future Land Use Map of the Comprehensive Plan? ___ Yes ___ No

Is the Rezoning consistent with the policies of the Comprehensive Plan? ___ Yes ___ No

Property is Presently Used For:

Property is Proposed to be Used For:

Proposed Rezoning is Necessary Because (Detailed Answer):

Proposed Rezoning will not be Detrimental to the Neighborhood or Public Welfare Because (Detailed Answer):

Proposed Rezoning will not be Detrimental to the City's Long Range Comprehensive Plan Goals, Objectives, Actions and Policies Because (Detailed Answer):

The undersigned depose and state that I/we am/are the owner of the property involved in this petition and that said property was purchased by me/us on the _____ day of _____, _____.

I hereby certify that I am the owner or authorized agent of the owner (include affidavit signed by owner) and that I have read and understand the content of this petition and that the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief.

(signature)

(telephone)

(date)

(email)

STATE OF WISCONSIN)
) ss.
COUNTY OF LA CROSSE)

Personally appeared before me this _____ day of _____, 20____, the above named individual, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public
My Commission Expires: _____

PETITIONER SHALL, BEFORE FILING, HAVE PETITION REVIEWED AND INFORMATION VERIFIED BY THE DIRECTOR OF PLANNING & DEVELOPMENT.

Review was made on the _____ day of _____, 20____.

Signed: _____, **Director of Planning & Development**

Sec. 15.34 of Code of Ordinances, City of La Crosse
Rev. 2/12

Sample Conditional Use Permit Application

File # _____
Computer # _____

Price County Conditional Use Permit Application

- This application shall be fully completed and submitted with the \$170 fee before the Zoning Department will begin to process your application. Incomplete applications will be returned to you.
- Completed applications must be received by the 1st working day of the month in order to schedule a public hearing on your proposal at the Zoning Meeting to be held the following month.
- You should contact the Town Board Chairman of where you're proposing a conditional use to determine if there is a need to discuss your proposal at a Town Board Meeting.
- The Zoning Department will publish a notice in the newspaper and notify all landowners within 300 feet of the property you're proposing a conditional use as to what you're proposing and where a public hearing will be conducted on your proposal. It's advisable that you contact adjacent landowners in advance of the hearing to inform them of your intentions to help clarify any concerns.

Applicant's name: _____ Phone number: _____

Applicant's address: _____

Owner(s) of property: (as listed on the deed) _____

Address of property: _____

Zoning District: (circle one) A-1 RR-1 RF-1 RB-R CI-I CI-C CI-1 RF-C C-1

<p>Legal description: Government Lot ____ or ____ 1/4 ____ 1/4, Section ____, Township ____ North, Range ____ East / West (circle one), Town of _____. Lot ____ of the _____ Subdivision</p>
--

Section _____ of the Price County _____ Ordinance provides the authority for this application to be submitted for the proposed conditional use.

Please answer these questions to help explain your proposal

1. Proposed Conditional Use: (Attach additional sheets if necessary. Describe the main activities and equipment to be used.)

-
2. Hours of operation. _____
 3. Number of employees. _____
 4. Will your proposal increase the percentage of impervious surface upon the property in which the conditional use is being proposed. Yes No If yes, please quantify the amount of impervious surface to be created and mitigation measures to be implemented to reduce erosion potential to adjoining property. _____

 5. Will your proposal have an adverse effect on public health? Yes No If yes, please explain. _____

 6. Will your proposal have an adverse effect the established character and quality of the area? Yes No If yes, please explain. _____

 7. Will your proposal have an adverse effect on any existing public roadway in your community? Yes No If yes, please explain the volume of traffic you anticipate. _____

 8. Will your proposal create harmful or nuisance effects that include noise, dust, smoke, odor, or other factors? Yes No If yes, please explain. _____

 9. Will your proposal involve any excavation on the respective property? Yes No If yes, please attach a topographical map with 1 ft. contours indicating pre-construction and post-construction drainage patterns and the erosion control measures to be implemented during construction.

Plot Plan

A plot plan **shall** be submitted with **all** conditional use permit applications. **Use the last page of this application to draw your plot plan.** The plot plan should be drawn to scale (indicate scale on map) and include items whether existing or proposed as follows:

1. All structures on the property upon which the conditional use is being proposed. (Indicate the length, width, and height of each structure.)
2. The well, septic system (including tanks and drainfield), and garbage/recycling containers.
3. All public roads, private driveways and parking areas.
4. Wetlands, floodplains, and ordinary highwater mark of any navigable lake, river, or stream.
5. Property boundary. If parcel is >5 acres in area, draw the items listed above at a scale that is discernable and simply indicate the distance to the boundary lines.

I certify by my signature that all information presented herein is true and correct to the best of my knowledge. I give permission for staff of the Price County Zoning Department to enter onto the property on which the conditional use is being proposed by this application during daylight hours to collect information relative to my proposal. I further agree to withdraw this application if substantive false or incorrect information has been included. I also understand that the \$170 fee is nonrefundable once a public hearing has been conducted on my proposal.

_____ <small>Notarized Signature of Applicant or Agent</small>	Subscribed and sworn to before me
_____ <small>Date</small>	This _____ day of _____, 20____ _____, Notary Public My Commission Expires _____

Office use only

Conditions of approval:

- 1.
- 2.
- 3.
- 4.

The Zoning Committee approved / denied this application on _____

Signature of Zoning Administrator

Date

Sample Town Recommendation Form

PIERCE COUNTY WISCONSIN	Pierce County Courthouse
DEPARTMENT OF LAND MANAGEMENT & RECORDS	414 W. Main Street P.O. BOX 647
Zoning: 715/273-6747 Planning: 715/273-6746 Fax: 715/273-6864	Ellsworth, Wisconsin 54011

Town Recommendation Form

Request: Conditional Use Permit Plat Approval – Concept, Preliminary, Final (Circle One)
 Map Amendment - (Rezone) Other- _____

Applicant/Agent:

Name _____

Site Address (if applicable) _____

Property Description: _____ ¼ of the _____ ¼, Section _____, T _____ N, R _____ W, Lot _____, Block _____,

Subdivision _____ Town of _____

Computer # _____ - _____ Parcel # _____

Zoning District _____ Acreage _____

A town recommendation is required as part of the application for a rezone (map amendment) or a conditional use permit. This recommendation is necessary whether a town has adopted a comprehensive plan or has not. Pierce County will seek to further each Town’s planning goals when considering the establishment of conditionally permitted uses and when considering approval of a request for a rezone or map amendment.

Pierce County will consider adherence to the goals, objectives, and policies of an adopted or amended town comprehensive plan to be consistent with the “public interest” for decisions relating to that Town. In cases where an adopted plan gives guidance regarding the establishment of a proposed conditional use, the specific portion of the plan relating to the request should be referenced. If a town plan is silent regarding the establishment of a proposed use, or a town has not adopted a comprehensive plan, the recommendation will be advisory in nature.

Pierce County will approve re-zonings (map amendments) within a given town only when the proposed amendment is consistent with that town’s comprehensive plan. The specific portion of the plan which supports the rezone request should be referenced. It should be noted that if a town’s comprehensive plan is silent on a proposed rezone, approval cannot be granted unless consistency is achieved through plan amendment. In cases where a town has not adopted a comprehensive plan, a rezoning request will be considered based upon its consistency with the Pierce County Comprehensive Plan. In such cases, a town’s recommendation regarding the proposed rezone will be used to assist the Land Management Committee in evaluating applicable goal statements. Questions regarding the need for a Town Recommendation and its use should be directed to Land Management Department Staff at (715) 273-6746.

Town Recommendation: _____ Approval _____ Denial

Justification/Plan Reference: _____

Concerns/Suggested Conditions: _____

Please attach additional information as necessary.

Town Chair Signature: _____ **Meeting Date:** _____

Sample Staff Report

Town of Brooklyn, Green Lake County, WI

FACTS OF THE CASE:

The property owners are seeking a conditional use permit for a planned unit development on a 1.33-acre parcel. The property is zoned as recreational district, which requires a conditional use permit for the establishment of condominium developments.

If the conditional use permit is approved, the property owner proposes to demolish the existing structures on the property, and construct four (4) condominium units. The Town of Brooklyn Future Land Use Map within the Town of Brooklyn Comprehensive Master Plan shows this parcel as future recreation/commercial. The proposed planned unit development would not conform exactly to the Future Land Use Map (which assumed the Carvers Supper Club would remain a local business), but is allowable as a conditional use in the recreational zoning district.

ORDINANCE REQUIREMENTS:

The Town of Brooklyn Land Division and Subdivision Ordinance states "area and average lot width of all lots and land areas shall conform to the Green Lake County Zoning Ordinance or shall be one hundred (100) feet wide and twenty thousand (20,000) square feet of net usable area". The Brooklyn Ordinance also states: "The Ordinance is expressly applicable to Condominium Developments within the Town's jurisdiction, pursuant to Wisconsin Statutes, Section 703.27(1). For purposes of this Ordinance, a condominium unit and any associated limited common elements shall be deemed to be equivalent to a lot or parcel created by the act of subdivision and reviewed in the same fashion by the Town, including design requirements provided in Articles 5. However, the technical requirements for Preliminary Plats shall not apply since condominiums have separate technical standards set forth in Wisconsin Statutes, Chapter 703".

A condominium is a form of ownership where no real land division takes place. Since condominiums do not divide land, density is used to determine the allowable number of condominium units by comparing condo units to lot sizes. Density requirements in Brooklyn allow one (1) house for every 16,000 sq. ft of land. A condo development is evaluated the same way with one (1) condo unit being allowed for each 16,000 sq. ft. of land. This allows for a maximum of three (3) units on this parcel. The application is for four (4) units.

RELATION TO THE COMPREHENSIVE PLAN:

The Town of Brooklyn Comprehensive Master Plan Map shows this area as recreation/commercial, but does not provide any more details for this site. However, the Town's plan does provide several goals addressing housing and natural resources. The following goals are listed in the plan and should be considered with this application:

- Carefully plan for residential development and encourage the majority of new development to occur around existing infrastructure and populated areas.
- Encourage infill development to provide housing by increasing density in already populated areas as opposed to creating sprawl that will be detrimental to the area's existing rural aesthetics.
- Work with County Officials to create ordinances regarding lakeshore development and shoreland vegetation removal practices.
- Encourage the majority of new development to occur around existing populated areas.

- Limit development of condos and apartments on the Lake to reduce multi-pier usage.
- Enact an Ordinance prohibiting the use of holding tanks on new construction.

ROLE OF THE PLANNING COMMISSION:

To review the application and study the appropriateness of the action based on the Town of Brooklyn Comprehensive Master Plan and applicable codes and ordinances. To consider comments and suggestions from residents in the Town. To provide a recommendation on the matter to the Town Board.

ADDITIONAL PLANNING / ZONING CONSIDERATIONS:

The Planning Commission needs to consider other issues/concerns with this PUD development:

1. **Density** - The proposed four (4) units exceed the density allowed by the Town of Brooklyn Land Division & Subdivision Ordinance. The maximum number of units allowed on this parcel is three (3) if treated the same as a conservation subdivision.
2. **Holding Tanks** - The Green Lake County Ordinance states: "The installation of a holding tank is prohibited unless the condition in Subsection A(1), (2) or (3) exists (Please refer to section 334-13 Holding Tanks of the Green Lake County Ordinance)". No sanitary information has been submitted. A clustered sanitary and well system is strongly encouraged.
3. **Stormwater Management Plan** - A Stormwater Management Plan is required if impervious surface on this parcel exceeds 5,000 square feet.
4. **Vegetative buffer** - Due to the increased intensity of land use for this parcel, a vegetative buffer, that meets Best Management Practices, is strongly encouraged to be installed along the Shoreline to protect water quality. The Green Lake County Land Conservation Department can provide assistance with shoreland restoration projects.
5. **Piers** - The sketch indicated increased waterfront usage by future unit owners. All appropriate permits for any piers or docks must be obtained from the DNR.

RECOMMENDATION FOR TOWN CONSIDERATION:

Denial of this application—as submitted—due to the fact that the density is in excess of that permitted by the Town of Brooklyn Land Division and Subdivision Ordinance.

A revised application for a condominium PUD that adheres to the density requirements established within the Town's ordinances and provides all required information for review could be approved on this site.

OMNNI Recommendations are based on professional planning staff review of application materials provided to OMNNI. The final decision is to be made by the Town based on facts and testimony received during their public meeting. This report provides information and opinion for Town consideration.

Prepared By OMNNI Associates
Associate Planner - Adam Sayre
For the Town of Brooklyn,
Green Lake County, WI
December 8, 2005