Workshop for Local Planning and Zoning Officials

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Center for Land Use Education
UW-Stevens Point/Extension
Workshop Outline

Part 1

• Local government structure

• Plan commission roles and responsibilities
  ✓ Comprehensive planning, plan implementation and consistency
  ✓ Review of subdivision plats and certified survey maps
  ✓ Referrals and advisory recommendations
Part 2

• Procedural Responsibilities
  ✓ Open meetings, public hearings, site visits
  ✓ Making and recording decisions
  ✓ Impartial decision makers and recusal

• Zoning
  ✓ Developing and amending the zoning ordinance
  ✓ Conditional uses/ special exceptions
  ✓ Planning and zoning for shorelands and wetlands
Workshop Outline

Part 3

• Zoning Board Roles and Responsibilities
  ✓ Variances
  ✓ Administrative appeals
Local Government Structure

Governing Body

- County Board

Boards and Commissions

- Planning & Zoning Committee
- Plan Commission
- Zoning Board of Adjustment

Chief Presiding Officer

- County Board Chair
- County Executive (optional)
- County Administrator (optional)

Staff

- Zoning Administrator (and staff)
- Planning Director (and staff)
- Corporation Counsel
Local Government Structure

Governing Body
- County Board
  - Plans, ordinances, amendments
  - Conditional use permits?
  - Plat review?

Boards and Commissions
- Planning & Zoning Committee
- Plan Commission
- Zoning Board of Adjustment
  - Policy Recommendations
  - Conditional use permits?
  - Plat review?
  - Variances
  - Conditional use permits?
  - Administrative appeals

Staff
- Zoning Administrator (and staff)
- Planning Director (and staff)
- Corporation Counsel

Policy-Making
- Zoning
- Subdivision
Why Do Communities Plan?

• Planning allows a community to identify, anticipate, balance and decide how to meet its needs:
  – preservation of resources and local character
  – targeted economic development and public investments
  – cost-effective delivery of services
  – intergovernmental opportunities
  – and more...

• Planning fosters predictable and defensible decisions

• Planning is proactive, rather than reactive
Types of Community Plans

**Functional Plans:**
- Land Use Plan
- Parks & Recreation Plan
- Housing Plan
- Facilities-Infrastructure Plan
- Economic Development Plan
- Disaster-Mitigation Plan
- Transportation Plan
- Transit Plan
- Bicycle & Pedestrian Plan
- Etc...

**Spatial Plans:**
- Site Plan
- Neighborhood/District Plan
- Regional/Intergovernmental Plan
Types of Community Plans

Comprehensive Plan:
• “A central organizing umbrella under which other plans, regulations and initiatives exist.”
  – Duerksen, 2009
– Address 9 elements
– Include written procedures for public participation
– Widely distribute for review/comment
– Adopt by ordinance following public hearing
– Update at least once every 10 years

(Wis. Stat. §66.1001)
67% of local governments have zoning, land division or official mapping functions which require consistency with a comprehensive plan.

84% have adopted a plan or started planning.

Does your community have a comprehensive plan?

As of November 2010:
- Adopted: 1,417
- Process underway: 132
- Not planning: 143
- Unknown: 158

Please consult with individual local governments to check accuracy or for those municipalities with an "unknown" status and email comp.planning@wisconsin.gov with any corrections to be made. See s. 66.1001, Wis. Stats., for more information on Wisconsin's Comprehensive Planning Law.

Some information self-reported by local and regional governments.
Using the Comprehensive Plan

• Do local officials and the public have access to your plan and ordinances?

✓ Provide copies to plan commission/elected officials
✓ Post on your website
✓ Place printed copies in library and government offices
✓ Hang large-format maps in meeting rooms
All Forms and Documents

The following are the Zoning Office forms and documents:

Land Use Ordinance

Barron County Comprehensive Plan - Adopted 4-20-2010 (6.25 MB)
  Supplemental Documents for Comprehensive Plan
    All Focus Meeting Notes (173 KB)
    Barron County Conditions and Trends Report (23.53 MB)
    Development Limitation Maps (18.21 MB)
    Inventory Plans and Programs (18.99 MB)
    Public Opinion Survey (736 KB)
    Town Future Use Maps (20.28 MB)

The West Central Wisconsin Regional Planning Commission has completed the Comprehensive Plan that incorporates the comprehensive plans for the counties of Barron, Chippewa, Clark, Dunn, Eau, Claire, Polk, and St. Croix. It was adopted on September 9, 2010 and the plan along with supporting documents can be found on the following web page: [www.wcwrpc.org/RPCCompPlan/index.html](http://www.wcwrpc.org/RPCCompPlan/index.html)
Using the Comprehensive Plan

• Do you regularly consult the plan before making major decisions?

  ✓ Rezones, subdivision plats, other land use permits
  ✓ Annexations
  ✓ Investment of public dollars (capital improvements, TIF funds, etc.)
  ✓ Location of infrastructure (parks, roads, sewer, water, etc.)
Consistency Review

• Beginning Jan. 1, 2010, new or amended zoning, land division and official mapping ordinances must be consistent with the plan

• Consistent means “furthers or does not contradict the objectives, goals and policies contained in the comprehensive plan”

(2009 Wisconsin Act 372)
Consistency

- Not a literal, exact translation from plan to ordinance
- Ordinance usually includes more detailed maps/text
- Absence of policy does not create an inconsistency
- Plan and supporting ordinances not contradictory

Example: Town of Wilson, Lincoln County
Example

- Village of Black Creek – Future Land Use Maps

10 and 20 year future land use maps show location, intensity and timing of development.
Example

- Village of Mount Horeb – Future Land Use Map

Plan specifies conditions under which growth may occur:

“development of this area is conditioned on the improvement of a new north-south collector road”
Example

- Village of DeForest – Growth Phasing Map

Growth phasing map specifies desired timing of development
Example

- Village of DeForest – “Consistency Matrix”

Future land use categories include zoning district recommendations

<table>
<thead>
<tr>
<th>Zoning Designation / Future Land Use Designation</th>
<th>Single Family Residential Sewered</th>
<th>Two-Family Residential</th>
<th>Mixed Residential</th>
<th>Planned Neighborhood</th>
<th>Mixed Use Centers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Districts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>RH: Rural Housing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R-1: Single Family Residential</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R-2: Two Family Residential</td>
<td></td>
<td>×</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R-3: Multi-Family Residential</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business Districts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B-1 Central Business</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
Example

- City of Sparta – Development Concepts Map

Maps are drawn in “bubble” fashion showing general locations for future development.
Using the Comprehensive Plan

Plan Implementation

• 2009 Wisconsin Act 372 clarified that the comprehensive plan is not a regulation
• Refer to the implementation element for a list of programs, policies, tools, actions and other recommendations to implement the plan
Plan Implementation

• Identify for each tool:
  – Timeline for implementation
  – Resources required
  – Party responsible for implementation
  – Indicators or measures of success
## IMPLEMENTATION ACTIONS

### Enhance Business Climate and Commerce - Page 48

<table>
<thead>
<tr>
<th>Action</th>
<th>Responsibility</th>
<th>Cost</th>
<th>Timing</th>
<th>Funding Options</th>
<th>Vision Principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Establish continuous retail frontage along main street</td>
<td>M&amp;C, EDA, CC</td>
<td>$$</td>
<td>I-M</td>
<td>PF, PV</td>
<td><img src="vis1-3" alt="Vision Principles" /></td>
</tr>
<tr>
<td>2. Redevelop underutilized land in the downtown</td>
<td>M&amp;C, EDA, HRA, PC</td>
<td>$$$</td>
<td>I-L</td>
<td>PF, DEED, FR, CF, PV</td>
<td><img src="vis4-6" alt="Vision Principles" /></td>
</tr>
<tr>
<td>3. Maintain existing destination retailers in the downtown</td>
<td>M&amp;C, CC, EDA</td>
<td>$</td>
<td>S-L</td>
<td>PV</td>
<td><img src="vis5-7" alt="Vision Principles" /></td>
</tr>
<tr>
<td>4. Continue to develop mixed use in the downtown</td>
<td>M&amp;C, EDA, HRA, CC, PC</td>
<td>$$</td>
<td>S-L</td>
<td>PF, PV</td>
<td><img src="vis6-8" alt="Vision Principles" /></td>
</tr>
<tr>
<td>5. Expand lodging options in the downtown</td>
<td>M&amp;C, EDA, HRA, CC, PC</td>
<td>$$</td>
<td>S-L</td>
<td>PF, FR, PV</td>
<td><img src="vis7-9" alt="Vision Principles" /></td>
</tr>
<tr>
<td>6. Develop the Crow River districts along highway 7</td>
<td>M&amp;C, EDA, CC</td>
<td>$$$</td>
<td>L</td>
<td>PF, FR, PV</td>
<td><img src="vis8-10" alt="Vision Principles" /></td>
</tr>
</tbody>
</table>

### Develop Attractive Housing Options - Page 66

<table>
<thead>
<tr>
<th>Action</th>
<th>Responsibility</th>
<th>Cost</th>
<th>Timing</th>
<th>Funding Options</th>
<th>Vision Principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Enhance upper levels of commercial building for living spaces</td>
<td>HRA, EDA, PAC</td>
<td>$</td>
<td>I-S</td>
<td>FR, PV</td>
<td><img src="vis9-11" alt="Vision Principles" /></td>
</tr>
<tr>
<td>2. Improve existing housing in the neighborhoods surrounding downtown</td>
<td>M&amp;C, PC, HRA</td>
<td>$</td>
<td>S-L</td>
<td>PF, FR, CF, PV</td>
<td><img src="vis10-12" alt="Vision Principles" /></td>
</tr>
<tr>
<td>3. Investigate conversion of Park Elementary School into live/work or artist's studios and housing</td>
<td>M&amp;C, HRA, PAC, EDA, CA</td>
<td>$$$</td>
<td>S-L</td>
<td>FR, CR, PV</td>
<td><img src="vis11-13" alt="Vision Principles" /></td>
</tr>
<tr>
<td>4. Add new housing options in the downtown</td>
<td>M&amp;C, HRA, PC</td>
<td>$</td>
<td>I-L</td>
<td>PF, FR, CF, PV</td>
<td><img src="vis12-14" alt="Vision Principles" /></td>
</tr>
<tr>
<td>5. Develop housing overlooking the river near Franklin Street and the old medical building site</td>
<td>M&amp;C, HRA, EDA</td>
<td>$$</td>
<td>I-S</td>
<td>PF, FR, CF, PV</td>
<td><img src="vis13-15" alt="Vision Principles" /></td>
</tr>
<tr>
<td>6. Develop housing overlooking the river in the East Crow River district</td>
<td>M&amp;C, PC, HRA</td>
<td>$$</td>
<td>M-L</td>
<td>PF, FR, CF, PV</td>
<td><img src="vis14-16" alt="Vision Principles" /></td>
</tr>
<tr>
<td>7. Create a long-term housing improvement and redevelopment area on the east side of downtown</td>
<td>M&amp;C, PC, HRA, EDA, PRCE</td>
<td>$$</td>
<td>L</td>
<td>PF, CF, PV</td>
<td><img src="vis15-17" alt="Vision Principles" /></td>
</tr>
</tbody>
</table>

### Responsibility

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Cost</th>
<th>Time Frame</th>
<th>Funding Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>M&amp;C - Mayor and City Council</td>
<td>$ - LOW</td>
<td>I - IMMEDIATE (1-2 YEARS)</td>
<td>PF - PUBLIC FINANCE</td>
</tr>
<tr>
<td>HRA - Housing and Redevelopment Authority</td>
<td>$$ - MID</td>
<td>S - SHORT TERM (3-7 YEARS)</td>
<td>DEED - DEED GRANTS</td>
</tr>
<tr>
<td>PC - Planning Commission</td>
<td>$$$ - HIGH</td>
<td>M - MID TERM (8-15 YEARS)</td>
<td>LEG - LEGACY GRANTS</td>
</tr>
<tr>
<td>EDA - Economic Development Authority</td>
<td></td>
<td>L - LONG TERM (15+ YEARS)</td>
<td>FR - FUND RAISING</td>
</tr>
<tr>
<td>PRCE - Parks/Recreation/Community Education</td>
<td></td>
<td></td>
<td>CF - CITY FUNDS</td>
</tr>
<tr>
<td>PAC - Public Arts Commission</td>
<td></td>
<td></td>
<td>PV - PRIVATE</td>
</tr>
<tr>
<td>CC - Chamber of Commerce</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HH - Heart of Hutchinson</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HIS - Historic Hutchinson</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CA - Center for the Arts</td>
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<td></td>
</tr>
</tbody>
</table>

### Funding Options

- **PF**: Public Finance
- **DEED**: DEED Grants
- **LEG**: Legacy Grants
- **FR**: Fund Raising
- **CF**: City Funds
- **PV**: Private
### Example

- **Bicycle Master Plan – Performance Measures**

<table>
<thead>
<tr>
<th>Performance Measure</th>
<th>Baseline Data</th>
<th>Target Benchmarks</th>
<th>Data Collection Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of bicycle network completed</td>
<td>34% of network currently exists as recommended</td>
<td>60% by 2015 70% by 2020 100% by 2030</td>
<td>Parks Department will provide annual report</td>
</tr>
<tr>
<td>Number of bicycle maps and safety brochures distributed each year</td>
<td>4,004 distributed in 2008</td>
<td>Distribute 5,000 each year</td>
<td>Parks Department will provide annual report</td>
</tr>
<tr>
<td>Percentage of all commute trips made by bicycle</td>
<td>Central City: 3.23% Citywide: 0.96%</td>
<td>Central City: 8% by 2015, 10% by 2020 Citywide: 2% by 2015, 5% by 2020</td>
<td>Transportation survey conducted every two years</td>
</tr>
</tbody>
</table>
Plan Implementation Toolbox

Regulatory Tools:
- Zoning
- Official mapping
- Subdivision regulation
- Cluster/conservation design
- Sign ordinances
- Driveway ordinances
- Building and sanitary codes
- Livestock facility siting ordinance
- Stormwater management

Educational/Voluntary/Fiscal Tools:
- Pamphlets, brochures and other educational materials
- Public land acquisition
- Land conservation programs
- Purchase or transfer of development rights
- Capital improvement plan
- Impact fees and user fees
- Density bonus
- And many, many more...
Recommended Resource

Plan Implementation Tool Factsheets

www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanImplementation.aspx
Updating the Comprehensive Plan

• Set timeline and process for reviewing plan and criteria for considering plan amendments
  – Ex. Oneida Nation Comprehensive Plan
Updating the Comprehensive Plan

• Focus on topics that are most important to your community
• Consider reorganizing, simplifying or adding chapters:
  ✓ Energy
  ✓ Food systems
  ✓ Public health
  ✓ Sustainability
Updating the Comprehensive Plan

• Illustrate your plan, ordinances and related materials with pictures, diagrams and non-technical language

• Prepare a glossy, informational brochure summarizing the plan’s main points

Bayfield County has established buffer requirements related to setbacks from water features and wetlands. The Town of Pilsen, as a part of this planning process, will strongly encourage natural buffers from all water features as a means of improving water quality.
Updating the Comprehensive Plan

- Same process to adopt and amend plan
  - Written public participation procedures
  - Plan distributed for review and comment
  - Class 1 notice provided at least 30 days prior to public hearing
  - Plan commission resolution recommending plan adoption
  - Governing body ordinance adopting plan

(Wis Stat. 66.1001(4))
Recommended Resource

Sample Documents for Comprehensive Plan Amendments

✓ Southeastern Wisconsin Regional Planning Commission, June 2010
✓ www.sewrpc.org/SEWRPC/communityassistance/EducationalServices2.htm#SmartGrowth

Includes:

Application form
Public hearing notice
Plan commission resolution
Local government ordinance
Sample public participation procedures
Scenario 1

Jack and Jill propose creating 5 lots that are each 1.5 acres in size.
Is a subdivision plat required?

YES!

- State provides minimum standards for subdivisions
  - Creation of 5 or more parcels of 1½ acre or less within 5 years
  - plat map, monuments, legal description, sanitation, street access
- Counties, towns, cities, villages may also have ordinances
- Most restrictive ordinance applies
Who has plat review authority?

Scenario 1
The subdivision is located in a town approximately 1 mile from the nearest village.
The county has a subdivision ordinance.
The town and village do not.
Objecting Authorities

- The following agencies have authority to “object” to state-defined subdivision plats:
  
  - **Dept. of Administration** — all subdivisions reviewed for compliance with surveying, layout, mapping and plat submittal requirements.
  
  - **Dept. of Transportation** — subdivisions that abut a state trunk or connecting highway reviewed for public safety issues and the preservation of public interests/investments.
  
  - **County planning agency** — subdivisions not served by public sewer reviewed for lot size/elevation necessary for proper sanitary conditions.
  
  - Some counties review for conflicts with parks, highways, airports, schools, and other planned public developments.
Approving Authorities

- The following units of government have authority to “approve” of state-defined subdivision plats:
  - **City** – if the subdivision is located in the city or its extraterritorial plat review jurisdiction
  - **Village** – if the subdivision is located in the village or its extraterritorial plat review jurisdiction
  - **Town** – if the subdivision is located in the town or an area whose annexation is being contested by the town
  - **County** – if the subdivision is located in the county and outside the city or village plat review jurisdiction
Extraterritorial Plat Review

• The extraterritorial plat approval jurisdiction extends:
  – 3 miles from a first, second, or third class city
  – 1.5 miles from a fourth class city or village

• The city or village must have an adopted subdivision ordinance or official map to exercise this authority

Answer: State, County and Town review Scenario 1
Is a subdivision plat required?

Scenario 2
Jack and Jill propose creating 25 lots ranging in size from 5-10 acres.
### Is a subdivision plat required?

**It depends on local regulations...**

<table>
<thead>
<tr>
<th>No. parcels</th>
<th>Parcel size</th>
<th>Time period</th>
<th>State Results</th>
<th>Racine Co. Results</th>
<th>Kenosha Co. Results</th>
<th>Walworth Co. Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 or more</td>
<td>1.5 acres or less</td>
<td>5 years</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>5 or more</td>
<td>3 acres or less</td>
<td>5 years</td>
<td>No</td>
<td>No</td>
<td>Maybe</td>
<td>Yes</td>
</tr>
<tr>
<td>5 or more</td>
<td>5 acres or less</td>
<td>5 years</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>5 or more</td>
<td>15 acres or less</td>
<td>5 years</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

How does your community define “subdivision”? 
What can the town review for?

Scenario 2

- Layout, access and safety (sight lines, turning radius, emergency vehicle access, etc.)
- Provision of public improvements (street lights, curb and gutter, etc.)
- Efficient use of public facilities/services (road length, proximity to existing utilities, etc.)
- Preservation of natural features (steep slopes, shorelands, wetlands, forests, etc.)
- Compatibility with adjacent uses (use, intensity, scale, etc.)
What can the town review for?

- Plat approval may only be conditioned on:
  - Compliance with local ordinances in place at time of submittal
  - Consistency with comprehensive plan or official map
  - Provision of public improvements or financial guarantees (contained in a town/village/city subdivision ordinance)
  - Satisfaction of objections raised by state agencies
  - Other requirements of Wis. Stat. Ch. 236

Short answer... items contained in an adopted comprehensive plan, ordinance or official map.
Land Divisions Not Subject to Plat Review

- Land divisions that do not meet state or local definitions of a subdivision (usually 4 or less parcels) may be surveyed, monumented and mapped by a registered land surveyor.

- The approved certified survey map is filed with the county register of deeds.
Role of the Plan Commission

- Subdivision plats must be referred to the plan commission for review and a recommendation.
- The governing body may delegate preliminary or final plat approval authority to the plan commission.
- Final plats dedicating streets, highways or other lands must be approved by the governing body.

(Wis. Stat. 62.23(5) and 236.10(3))
Typical Plat Review Process

1. **Pre-Application Conference** (PC and Staff – *if required*)
   - Informal review intended to spot problems upfront

2. **Preliminary Plat Approval** (GB or PC – *if required or submitted*)
   - Submission of detailed plans and maps
   - 90 days for local government to approve, condition or deny

3. **Final Plat Approval** (GB or PC)
   - Submission of detailed engineering and design drawings that meet requirements of Ch. 236
   - 20 days for state agencies to register objection
   - 60 days for local government to approve, condition or deny

4. **Survey by registered land surveyor and recording with county register of deeds**
PRE-APPLICATION CHECK LIST

- Dumpster Enclosures
- Cross sections of all RTU, wall mounted meters or air handling units.
- Lighting Plan – Parking Lot and Street Lighting if required

§226 & §275.55 Stormwater & Drainage Plan
- Stormwater Management Plan meeting the requirements of Chapter 226
- Master Grading Plan drawn to a scale no greater than 1”=100’ on no smaller than 24” x 36” sheets
- Erosion Control Plan drawn to a scale no greater than 1”=100’ on no smaller than 24” x 36” sheets

§275-24C(4) Utility Plans
- The Utility Plan may be incorporated into the site plan as long as it remains readable.
- Utility Plans draw to a scale no greater than 1” = 100’ on no smaller than 24” x 36” sheets (four copies required).
- Sewage Disposal with location of pipe, septic field, holding tank or sampling manhole
- Water Supply source with location of pipe or well
- Location of electric, gas and telecommunication equipment
- Location of existing and proposed utility easements
- RTU, wall mounted meters or air handling units.

§275-56 Landscaping Plan
- Landscaping Plan to a scale no greater than 1” = 100’ on no smaller than 24” x 36” sheets (four copies required)
- Landscaping Plan drawn and colored suited for public presentation to fit on a single 11” x 17” sheet (eighteen color copies required)
- Signature of Landscape Architect that prepared plan
- Fiscal security – installation and maintenance bond or letter of credit
- Limits of Disturbance boundary, §275-54A
- Size, location, type and height of new and existing landscaping
- Screening materials
- Location of electric, gas and telecommunication equipment screening
- RTU, wall mounted meters or air handling units screening.
- Buffer yard landscaping
- Existing wooded areas
- Watercourses
- Scenic or significant vistas
- Pedestrian Access / Sidewalks / Trails

§275-54 Natural Resource Preservation
- Limits of Disturbance (LOD) boundary shown on Site Plan and Landscaping Plan
- No development, grading or vegetation removal or alteration (other than approved landscaping) shall occur outside the LOD
- Residential uses: No more than 60% of the total gross area to be within the LOD
- Non-Residential uses: No more than 75% of the total gross area to be within the LOD
- Woodland, tree and vegetation protection shown on Landscaping Plan
- Location and size of all significant trees (deciduous trees with a DBH of 5 inches or larger or conifers trees 10 foot and taller)
- Significant trees to be removed shall be identified
- Location and size of all replacement trees, see §275-54B(6)
- Wildlife conservation plan (only if required by staff) in accordance with §275-54C

§275-37B(4)(b) Wetland Field Verification

RIV: 2/18/2006
Page 2 of 3
Adopted by BPW: February 13, 2006
Document: Pre-Application Checklist 021056.doc
BARRON COUNTY SUBDIVISION ORDINANCE

Checklist to be filled out by the Town Board

TO: Town Board of the Town of ________________________________

The Barron County Zoning Committee expects to review a land division proposed by ________________________________
Land Owner
and assisted by ________________________________ Surveyor (If one has been engaged)
consisting of _________ lots or parcels located at the ________________________________ in Section _________ of your Town. Prior to County review, we require the Town
Board’s answers to the following questions:

1.) Roads. The township will accept ownership of the street and roads within the proposed subdivision.

   Yes _____   No _____
   [If some roads are to become town roads and others are to stay private, please indicate this here or on a map.]

   Comments: __________________________________________

2.) Standards. The standards for right-of-way, design and construction of the roads within the subdivision will be as follows:

   [The Town Board should indicate here, or by attaching a separate sheet, the standards of the Town for right-of-way
   width, maximum and minimum grades, width, depth and type of base materials and paving, specifications on shoulders,
   ditches, culvers, cul-de-sacs, erosion control, fencing and plantings of vegetative cover.]

3.) We want the County to send the Subdivision to the Barron County Soil and Water Conservation Department for calculation of watershed-drainage areas, and sizing of culverts, specification of drainage ways, detention areas and erosion-control features in accord with those calculations and other appropriate technical standards.

   Yes _____   No _____

4.) Suitability of Lots for Septic Systems. The County policy is to require all unsewered lots that are intended to have building development to be fully tested for suitability for on-site waste disposal in order to be approved for

   Yes _____   No _____
Preliminary Plat drawn to scale including location of streets, utility lines, parks, storm drainage, sewer and water lines, etc....
Accompanied by:
Surveyor’s certificate of compliance,
Owner’s certificate of dedication,
Consent of mortgagee,
Certificate of taxes paid,
Description of easements, and
Local government approvals.

Final Plat including subdivision name, legal description, street names, boundaries, measurements and other engineering data.

Must follow accepted printing, layout and binding standards.
Role of the Plan Commission

Required Referrals:

- Land division and subdivision plats (Wis Stat 62.23(5))
- Adoption or amendment of subdivision or land division ordinance (Wis. Stat. 236.45(4))
- Amendment or repeal of comprehensive plan, zoning ordinance, official map (Wis Stat 62.23(5))

In most cases, Plan Commission has 30-day review period before decision-making body may take action.

Failure to refer may result in a court voiding the action.
Role of the Plan Commission

Required Referrals:

• Location and design of public buildings (Wis Stat 62.23(5))
• Location of statues and memorials (Wis Stat 62.23(5))
• Acquisition of or changes to land for public purposes (street, park, airport, housing, etc.) (Wis Stat 62.23(5))
• Location, extension or abandonment of public or privately-owned utilities (Wis Stat 62.23(5))
• Application for licensure of a child welfare agency or group home (Wis. Stat. 48.68(3)) or community-based residential facility (Wis. Stat. 50.03(4))
• Creation of a pedestrian mall (Wis. Stat. 66.0905)
• Proposed housing projects (Wis. Stat. 66.1211(3))
Role of the Plan Commission

Other programs that require PC involvement:

• Tax increment financing district (Wis. Stat. 66.1105)
• Business improvement district (Wis. Stat. 66.1109)
• Architectural conservancy district (Wis. Stat. 66.1107)
• Reinvestment neighborhoods (Wis. Stat. 66.1107)
• Urban redevelopment and renewal projects (Wis. Stats. 66.1301 and 66.1331)

Additional matters at discretion of governing body

• ex. conditional use permits, site plan review, planned unit developments, intergovernmental agreements, etc.
Hands-on Exercise

Your Job: Be the Plan Commission

1. Review the proposal
2. Evaluate the proposal using the decision form
3. Determine whether or not to:
   - Accept the proposal
   - Reject the proposal
   - Recommend changes to comprehensive plan and/or zoning
I. Introduction to the Plan Commission
II. Procedural Responsibilities
III. Community Planning
IV. Public Participation
V. Plan Implementation
V. Ordinance Administration
VI. Zoning Regulations
VII. Subdivision Regulations
Plus forms, worksheets, glossaries and recommended resources
Thank You!

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Workshop for Local Planning and Zoning Officials

Rebecca Roberts and Lynn Markham
Center for Land Use Education
UW-Stevens Point/Extension
Workshop Outline

Part 2

• Procedural Responsibilities
  ✓ Open meetings, public hearings, site visits
  ✓ Making and recording decisions
  ✓ Impartial decision makers and recusal

• Zoning
  ✓ Developing and amending the zoning ordinance
  ✓ Conditional uses/ special exceptions
  ✓ Planning and zoning for shorelands and wetlands
Open Meetings

Wisconsin’s **Open Meetings Law** requires:

- meetings are open and accessible to the public, including the disabled.
- the public is provided with advanced notice of meetings.
- closed sessions are limited to specified circumstances and procedures.
Open Meetings

**Purpose test** = discussion, information gathering or decision-making on a matter within the jurisdiction of the body.

**Numbers test** = enough members of a body are present to determine the outcome of an action.

- If one-half of the members of a body are present, there is a meeting unless the purpose test is not met.
- A lesser number of members may meet the numbers test if they can block a decision.
Open Meetings

• Phone conferences, letters, e-mails or faxes between board members may constitute a meeting if the numbers & purpose tests are met.
• A series of phone calls or conversations to “line up votes” or conduct other business violates the law.
• Discussion of meeting scheduling & logistics is OK.
Closed Sessions

Closed sessions are limited by statute:

- Deliberations concerning a judicial or quasi-judicial “case” with opposing parties
- Legal consultation for current/likely litigation
- Deliberations regarding property acquisition and other bargaining issues
- Personnel matters including employee performance, compensation, discipline, etc.
- Damaging personal information
- Others listed at Wisc. Stat. §19.85
Conduct of Closed Sessions

• Record individual votes to convene in closed session.
• Those who vote against may participate without liability.
• Attendance limited to body and parent body.
• Legal counsel and others essential to closed session may also attend.
• Consider only matters for which session is closed.
• Motions and decisions must be recorded.
Notice Requirements

• Public Meeting Notice
  • At least 24 hours prior (2 hours for good cause)
  • May be posted (3 locations recommended)
  • Paid, published notices not required

• Public Hearing Notice
  • 1 newspaper publication at least 30 days prior to comprehensive plan adoption or amendment
  • 2 consecutive newspaper publications in 2 weeks prior to ordinance adoption or amendment
  • Other decisions as specified by ordinance
Site Inspections

What are your options??
Site Inspections

• Should decision-makers view the site as individuals? As a group?

Either. Must have inspection authorization, which may be included on application. Group visits must be noticed as an open meeting.

• Can the public go on-site?

If the board/commission goes on-site as a group, the inspection is an open meeting and must include the public. Otherwise members of the public must obtain owner’s permission.
Site Inspections

• Can decision-makers question the property owner on-site? How about staff?
  You can ask technical questions or clarifications. All other questioning and discussion should be saved for the hearing.

• Who can decision-makers talk with during the ride from the site to the meeting?
  They can talk to anyone, just not about board/commission issues.
Rules for Decision-Making

**Legislative**
- policies, plans
- ordinances, amendments

**Quasi-judicial**
- variances
- conditional uses
- plat review

**Administrative**
- permits

**Discretion**
- Pre-determined standards apply.
- Conditions may be applied.
- Procedural due process.
  (notice, public hearing, record, impartial decision-maker)

- Constitutional and reasonable.
- Public participation encouraged.

- Apply ordinance as written.
- No additional conditions.
Impartial Decision-Makers

Statutory Conflicts of Interest
(Wis. Stat. s 19.59 and s. 946.13)

• A local official cannot use a public position for the private benefit or financial gain of:
  – the individual
  – immediate family members
  – organizations they are associated with
Impartial Decision-Makers

Bias of Local Officials

*(Keen v. Dane County, 2004 WI App 26)*

- Payne & Dolan applied for a conditional use permit (CUP) for a gravel pit
- CUP was granted over the protests of neighbors
- Neighbors appealed
Impartial Decision-Makers

Biased??

Decision maker #1
• A letter was submitted as part of the CUP application stating: “Payne and Dolan has always stood out above the rest in their efforts and success in being a good corporate citizen and caretaker of the land.”

Decision maker #2
• Had leased his land to Payne and Dolan for the operation of a gravel pit.

Advocate
Risk of bias too high

Prior, independent business transaction
Impartial Decision-Makers

• Local officials deciding on quasi-judicial matters (i.e. conditional use, variance, etc.) must not harbor bias, or an impermissibly high risk of bias, or prejudge the application

Keen v. Dane County, 2004 WI App 26
Impartial Decision-Makers

• “Recuse” yourself from decisions that present a conflict of interest or bias (or appearance of bias)
  – Not the same as abstaining (not voting)
  – Do not participate in decision or discussion leading up to decision
  – Physically separate yourself from the decision-making body
  – If you need to provide testimony, do so as a member of the audience
Impartial Decision-Makers

Ex-parte Communication = discussion regarding a pending matter not included in the public record.

• Quasi-judicial decision-makers should...
  – avoid it,
  – disclose it, and
  – encourage citizens to make important information part of the public record.
Back to the gravel pit case in Dane County...

Local ordinance listed 10 factors to consider when deciding a CUP
- Purposes of zoning district
- Availability of alternative locations
- Compatibility with existing or permitted use on adjacent lands...

Keen v. Dane County, 2004 WI App 26
After a very lengthy discussion...the CUP was granted with 61 conditions

But the decision did not refer to the 10 factors in the ordinance

A record without any reference to the factors in the ordinance is not sufficient

Keen v. Dane County, 2004 WI App 26
Lamar applied for a variance to raise a billboard above the City’s max sign height.

BOA denied variance stating that the variance criteria were not met.

Lamar Central Outdoor v. Board of Zoning Appeals of the City of Milwaukee, 2005 Wisconsin Supreme Court
Recording Decisions

• Decision-makers must express, on the record:
  1. the statutory or ordinance criteria under which the application is decided and
  2. the reasons the criteria are or are not satisfied

• The reasons do not need to appear in a written decision but should appear somewhere in the public record (meeting minutes, transcript, recording, etc.)

• If appealed, a judge will review the record and needs to be able to follow your reasoning
Recording Decisions

• Which motion would you prefer?

1. I move we recommend denial.

2. I move we recommend denial because the petitioner did not meet the standards.

3. I move we recommend denial because this guy isn’t from here and we don’t know him.

4. I move we recommend denial because the petitioner failed to show increased traffic will not create a pedestrian hazard.
Recording Decisions

Application forms should prompt:

- Contact information
- Property description
- Current conditions
- Maps, photos, scale drawings
- Compliance with ordinance standards
Recommended Resource

- Sample guides, checklists and forms
Recording Decisions

Decision forms should prompt:

- Facts of the case
- Compliance with ordinance standards
- Recommendation or decision
- Related conditions or limitations
Recommended Resource

- Sample decision forms

```
<table>
<thead>
<tr>
<th>Application/Petition # ____________</th>
</tr>
</thead>
</table>

Plan Commission Decision Form

I. Findings of Fact

Name, address and phone number of applicant: ________________________________
______________________________________________________

The applicant requests:
- Preliminary / final plat approval
- Conditional use / special exception
- Zoning map / text amendment
- Comprehensive plan map / text amendment
- Other: ________________________________

Brief description of property and surrounding conditions: ________________________________
______________________________________________________

Brief description of proposal: ________________________________
```

#W
Legally Defensible Decisions

Courts defer to local decision makers when these tests are met:

1) **Subject matter jurisdiction**
   Did the body decide a matter that it is empowered by statute or ordinance to act on?

2) **Proper procedures**
   Did the body follow proper procedures (open meeting law, public notice, hearing, record of decision, etc.)?

3) **Proper standards**
   Did the body apply proper standards in making the decision? (refer to standards for rezonings, CUPs, plat review)

4) **Rational basis for the decision**
   Could a *reasonable person* have reached this conclusion?

5) **Evidence in the record**
   Do facts in the record of the proceedings support the decision?
Zoning

Counties
• Required to administer shoreland/wetland zoning
• May adopt general zoning in unincorporated areas

Towns
• May adopt general zoning if no county zoning or after adoption of village powers
• May adopt shoreland zoning if more restrictive than county

Cities/Villages
• May adopt general zoning and extra-territorial zoning (1.5-3 miles of boundaries)
• May have shoreland or floodplain zoning - required in some circumstances

Information self-reported to Wisconsin Department of Administration, November 30, 2010
A zoning ordinance contains 2 parts:

- Map – divides the community into districts
- Text – describes allowable uses and dimensional restrictions (i.e. lot size, density, setbacks, height, etc.)
Zoning – Allowable Uses

1. **Permitted Use** – a use that is listed and **allowed by right** in all parts of a zoning district (granted by zoning administrator)

2. **Conditional Use / Special Exception** – a use that is listed for a district and **may be allowed** if suited to the location (decided by plan commission, zoning board or governing body)

3. **Unlisted or Prohibited Use** – a use that is expressly prohibited or not listed for the district is **not allowed**
Conditional Uses

- Discretionary decision – may be granted or denied
- Must be listed for the zoning district
- Decision criteria also listed in the ordinance
- Conditions may be attached
Conditional Uses

- Permit generally assigned to property, not owner
- Conditions cannot be changed unless permit is revoked or expires
  - Permit may be revoked due to non-compliance
  - Expiration date appropriate for temporary uses such as gravel pit
- In the case of a zoning change, property becomes nonconforming and conditions cannot be enforced

(Hussein v. Germantown BOA, 2011 WI Court of Appeals)
Attaching and Tracking Conditions

• Options for developing conditions:
  – Zoning staff develops generic list of conditions based on common permit requests/situations
  – Zoning staff recommends conditions specific to permit request as part of staff report
  – PC/GB/BOA develops conditions specific to permit request at close of public hearing
  – Some combination of the above
Attaching and Tracking Conditions

Conditions must meet 2 tests:

1) **Essential nexus** – address expected harmful project impacts

2) **Rough proportionality** – be proportional to the extent of those impacts
Options for ensuring compliance:
- Conditions recorded on deed
- Compliance reporting by owner as condition of permit (required on periodic basis or upon sale of property)
- Zoning staff maintains database and periodically checks for enforcement
- Cash or surety bond for projects involving significant capital outlay (i.e. mitigation, construction, etc.)
- Do nothing -- wait for complaints
Zoning – Relief Mechanisms

1. **Variance** – allowed “violation” of an ordinance standard (decided by zoning board)

2. **Appeal** – contested decision or interpretation of the zoning ordinance (decided by zoning board or circuit court)

3. **Map or Text Amendment** – change to the zoning ordinance (adopted by governing body with advisory recommendation from plan commission)
Suggested Rezoning Criteria:

• **Consistent with comprehensive plan.**

• **Meets criteria for proposed district.** May include soil suitability, septic suitability, environmental suitability, proximity to wetlands and adjacent waters, etc.

• **Compatible with adjacent uses.** Avoid potential conflicts with neighbors such as noise, litter, lighting, aesthetics, construction erosion, and stormwater runoff.

• **Public purpose.** Should provide public purpose or benefit; not merely benefit an individual property owner.
Veto Authority for Towns under County Zoning

**Stage 1**
Towns have 10 days from public hearing to object to changes outside shoreland/floodplain areas. If town disapproves, P&Z must revise proposal or recommend denial.

**Stage 2**
If majority of affected towns disapprove within 40 days of county vote, amendment does not take effect.
Updating Your Ordinance

Annual Self-Audit

• Hold joint meeting with governing body, plan commission, zoning board and staff
• Monitor progress towards plan implementation
• Summarize number and types of rezones, conditional uses, variances, appeals, etc.
• Make recommendations to clarify plan or ordinance language that is unclear, inadequate, overly restrictive or otherwise problematic

See PC Handbook (chapter 6, pg. 11) or BOA Handbook (chapter 19)
Planning and Zoning for Shorelands and Wetlands
“More polluted lakes have less valuable property than do cleaner lakes.”

Water Quality and Economics

• A study of over 1,200 waterfront properties in Minnesota found when water clarity changed by 3 feet, changes in property prices for these lakes are tens of thousands to millions of dollars.

Healthy watersheds make healthy lakes & higher property values

- If water quality erodes, then the tax base around lakes erodes too

- *If waterfront property values and property taxes go down, whose taxes will go up to maintain county services?*
Shoreland Zoning Applies Near Lakes and Rivers

- Required in unincorporated areas
- Optional in cities and villages
Minimum WI Shoreland Standards

- Lot size
- Vegetation protection area (buffer)
- Shoreline setback
- Impervious surface limit
- Mitigation
Deep-rooted native shoreline and upland plants are more effective than lawn grasses at stabilizing shorelines and halting erosion.
Buffer zone functions:

- Reduce runoff, erosion and sedimentation to preserve water quality/clarity
- Take up nutrients that feed algae
- Critical habitat for wildlife and fish
- Preserve natural beauty
Impervious surfaces impact...
Runoff Volume
Phosphorus Inputs
Sediment Inputs

Adapted From: Wisconsin DNR
Old story that northerns lose their teeth in the summer. Not true. But they don’t do well when the water warms up. Imagine what asphalt parking lots or dark colored shingles do to water temp. 100s of northerns died in the summer of 2012 when water temps reached 90 degrees in southern and central WI.

2008 study of 164 WI lakes found the same trend.
More impervious surface causes

- Larger and more frequent floods
- Less groundwater leads to lower stream flows & warmer water temperatures during dry periods
More runoff from hot pavement and shingles makes the water hotter.

More nutrients from soil and fertilizers result in more algae and less oxygen in the water, which fish need to survive.

Trout are gone above 11% impervious
Northern pike are gone above 12% impervious
More sediments and algae growth make it difficult for some predator species that hunt by sight to find their food.

More sediments cover spawning beds of fish such as walleye and smallmouth bass, depriving eggs of oxygen.
**Brook Trout and Brown Trout**

- Require cold, clean, high-oxygen water to survive
- Sensitive to pollution and low oxygen conditions
- Part of their diet consists of aquatic insects and small fish, whose populations decrease with increased runoff and sedimentation

---

**Trout are eliminated from streams when impervious surfaces cover more than 11% of a watershed**
Walleye

• Walleye typically spawn between mid-April and early May in WI when spring runoff is highest. Rock- and gravel-covered bottoms are their preferred spawning grounds.
• Impervious surfaces can cause soil erosion which leads to sedimentation. When the spaces between the rocks and gravel become blanketed with silt, walleye eggs can die quickly due to lack of oxygen.
• Adult walleyes are often able to cope under these conditions, but harming the success of eggs puts the survival of a healthy walleye population at risk.
Impervious surfaces impact:

1. Water quality and property values

2. Fish
   - When water runs over asphalt or shingles and into a lake or stream, it gets warm. Some fish can’t take the heat.
   - Northern pike & largemouth bass are gone above 12% impervious
   - Trout are gone above 11% impervious

3. Wildlife
What are Wetlands?

Wetlands vary in size, type, and appearance. There are 12 community types, including some that may be wooded or only wet at certain points throughout the year.
What are Wetlands?

Where land and water meet; characterized by 3 main criteria:

1) Wetland hydrology: water at or beneath the land surface for at least a portion of the year
2) Hydric (wet) soils: soil types known to develop under wet conditions
3) Hydrophytic (wetland) vegetation: plants adapted to wet conditions

***These indicators may still be present on sites that were previously disturbed (e.g., pasture). Professional judgment may be needed if an indicator is not clearly evident at the site***
# The Wetland Permit Process

***Federal and state regulations apply to wetlands, in their jurisdictions, based on field conditions***

<table>
<thead>
<tr>
<th>REQUIRED Protections</th>
<th>FEDERAL</th>
<th>STATE</th>
<th>LOCAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdiction</td>
<td>Wetlands near waterways</td>
<td>ALL wetlands</td>
<td>Shoreland wetlands</td>
</tr>
<tr>
<td>Authority</td>
<td>Section 404 Clean Water Act</td>
<td>State statutes &amp; adm. rules</td>
<td>Shoreland zoning (NR 115, 117)</td>
</tr>
<tr>
<td>Key Actor(s)</td>
<td>US Army Corps District Engineer</td>
<td>WDNR Water Mgt Specialist</td>
<td>Zoning staff &amp; local officials</td>
</tr>
</tbody>
</table>

**Table:**
- **Jurisdiction:** Wetlands near waterways, ALL wetlands, and Shoreland wetlands.
- **Authority:** Section 404 Clean Water Act for federal, State statutes & adm. rules for state, and Shoreland zoning (NR 115, 117) for local.
- **Key Actor(s):** US Army Corps District Engineer, WDNR Water Mgt Specialist, and Zoning staff & local officials.
Wetland Mapping 101

Wisconsin Wetland Inventory Maps
- Shows only wetlands of a certain size (>2 or 5 acres)
- Some wetland types underrepresented (forest, seasonal, agric, etc)
- Misses some areas that meet official definition of a wetland

Wisconsin Wetland Indicator Maps
- Shows “potential wetlands”
- Areas that may be wetlands based on hydric or wet soils
- Field inspections needed to ground truth
DNR Surface Water Data Viewer:
http://dnr.wi.gov/topic/surfacewater/swdv/
Why Protect Wetlands?

- Water Quality
- Flood Protection
- Fish & Wildlife Habitat
- Cultural Resources
- Recreation
- Open Space Protection
How Do You Plan for Wetlands?

Many WI communities have adopted policies that address long-standing wetland challenges:

1. Purpose statements that address wetland protection and restoration

2. Protections that do not depend on maps and apply to wetlands based on field conditions

3. Permitting programs that seek to avoid and minimize wetland disturbances

4. Structural setback / vegetated buffer requirements
Ex. Barron County Zoning Ordinance

- **Shoreland-Wetland District** protects wetlands of 5 acres or more within the shoreland zone and identified on the Wisconsin Wetland Inventory maps dated June 1, 1983.
- **Wetland Conservancy District (C-1)** defines wetlands more broadly and applies outside of shoreland-wetland zone
  - **Purpose Statement** – describes wetland functions and limitations of building in wetlands
  - **Grading Permit** – land disturbing activities greater than 500 square feet may not significantly impair wetlands
Waking Up to Wetlands
Know Before You Buy or Build

A helpful guide for determining wetlands

Wetland Clues Checklist
Is there evidence of water?
Yes No

- Are there ponds, lakes, streams, springs or seeps?
- Are there “low spots” where water collects or the ground is soggy for at least a week?
- Are there drainage channels or has the site been ditched or tiled in spots to “dry it out”?
- If the site is a farm field, are there areas where crops do not grow or the plants are stunted or yellowing during years with normal rainfall?
- Are there water marks or stains on tree trunks?
- Do trees have a shallow root system?
- Are there areas where water has scoured away plants and leaves, flattened vegetation or where no vegetation is growing?
- Are sticks, leaves, soil and other debris deposited by water in a line on plants and trees?

Are water-loving plants present?
Yes No

- Are these plants present: cattails, reed canary grass, sedges, rushes, blue flag iris, joe-pye-weed, new england aster, sensitive fern, skunk cabbage or sphagnum moss?
- Are these shrubs present: dogwoods, willows, alder, leatherleaf, spiraea or blueberry?
- Are these trees present: willows, silver maple, box elder, black or green ash, cottonwood, elm, balsam fir, tamarack or spruce?
- Do plants have roots growing from their stems above the soil?
- Do trees have multiple trunks or are the trunks expanded or swollen at the base?

Are there wet soils or signs of them?
Dig a hole down 10 inches:
Yes No

- Is the soil dark brown or black?
- Does the soil feel moist or can you squeeze out water?

In accordance with Wisconsin State Statute 59.691, the information provided herein is to give you notice regarding potential Wetlands. You are responsible for complying with State and Federal laws concerning construction near or on wetlands, lakes, and streams. Wetlands that are not associated with open water can be difficult to identify. Failure to comply may result in removal or modification of construction that violates the law or other penalties or costs. For more information, visit the Department of Natural Resources Wetlands Identification Web Page or contact a Department of Natural Resources Service Center.

I (applicant) acknowledge notice of this wetland information.

______________________________  ________________________
Signature                                      Date
Thank You!

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Workshop for Local Planning and Zoning Officials

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Center for Land Use Education
UW-Stevens Point/Extension
Zoning Board Organization

County Board of Adjustment: 3-5 members
- Members must reside in an unincorporated area of the county
- No more than 1 member from each town

Town Board of Adjustment: 3 members
- Members must reside in the town
- No more than 1 town board member

City, Village or Town Board of Appeal: 5 members

See Chapter 3 of the Zoning Board Handbook for more details
Zoning Board Organization

- Counties, cities, villages and towns with village powers **shall** appoint 2 alternate members to the BOA - *2005 Wisconsin Act 34*

  - 1\(^{st}\) Alternate shall act with full power when a member cannot vote due to conflict of interest or absence
  - 2\(^{nd}\) Alternate **only** acts when 1\(^{st}\) alternate or multiple BOA members cannot vote
Zoning Board Organization

• Members serve staggered 3-year terms
• Vacancies filled for the remainder of a term

• We recommend that members of the governing body not serve on the BOA
  - Difficult to perform both legislative and quasi-judicial role
Role of the zoning board

• Review and decide cases

• 3 types of decisions:
  1) Administrative appeal
  2) Variance
  3) Special exception/conditional use
The zoning board functions like a court...

1) Decision-making criteria are outlined in state statutes, case law, and local ordinances.
2) The board applies these laws to particular fact situations (quasi-judicial decisions).
   - BOA decisions can be appealed to higher courts.
   - Decisions will generally be upheld if proper decision making standards and procedures are followed.
Discretion...  
Flexibility in decision-making

- Constitutional and reasonable.  
- Public participation encouraged.

**Legislative**
- policies, plans, ordinances

- Pre-determined standards apply.  
- Conditions may be applied.  
- Discussion only during the hearing.

**Quasi-judicial**
- variances, conditional uses, admin. appeals

- Apply ordinance as written.  
- No additional conditions.

**Administrative**
- permits
The town board polls every resident & determines that no one objects to Joe’s request for a variance to allow construction of a garage within the roadway setback. In fact, most would like the same opportunity.

How should the zoning board react to this information...?
Zoning Board Decisions

Variances
Purpose: to preserve local regulatory standards, prevent regulatory *takings*, and avoid unnecessary burdens on property owners.

• Variances not meant to provide general flexibility in ordinances.
• Ordinance should provide some level of flexibility to preserve regulatory objectives while maintaining community support.
Variances

- When granted, appointed BOA members allow landowners to violate the ordinance adopted by governing body
- Decision standards are set by the state legislature and courts

Special exceptions

- Can only be granted if elected governing body lists them in ordinance for the zoning district
- Decision standards are set locally
Variances

Use variances “permit a landowner to put property to an otherwise prohibited use.”

Area variances “provide an increment of relief (normally small) from a physical dimensional restriction such as a building height, setback, and so forth.”

Ziervogel v. Washington County Board of Adjustment, 2004 WI Supreme Ct.
An applicant has burden of proof to show that all three statutory tests are met:

1. unnecessary hardship*
2. due to conditions unique to the property &
3. no harm to public interests
Variances

Conditions unique to the property test

Conditions unique to the property include physical limitations of the property, such as steep slopes or wetlands that must prevent compliance with the ordinance.

Does every small, steep or irregularly shaped parcel qualify for a variance?

To avoid unbuildable lots, Bayfield County now requires 3000 sf of buildable area to create a shoreland lot.
Variances

Conditions unique to the property test

• Limitations that prevent ordinance compliance & are common to a number of properties should be addressed by ordinance amendment.

• Circumstances of an applicant such as a growing family or need for a larger garage, are not a factor in deciding variances.
Variances
Public interest test

- A variance granted may not harm public interests but is not required to advance them.

- "Public interests" are the purpose and intent of the ordinance that were agreed upon by the county board, representing the community. Those who provide testimony may try to convince you other factors are the "public interests."

- Short-term, long-term and cumulative impacts of variance requests must be considered. Zoning staff should provide an impact analysis.
What does unnecessary hardship mean for area variances?
Ziervogel & area variances...

- House located 26 feet from the OHWM of Big Cedar Lake in Washington County
- Owners wanted a 10-foot vertical expansion of their house to add two bedrooms, two bathrooms, and an office to the house
- Washington County's Ordinance prohibited expanding any structure within 50 feet of the OHWM of a lake
- Washington County BOA denied variance request
- Circuit Court & Court of Appeals affirmed
- Supreme Court changed standard
Unnecessary hardship test for area variances...

• Unnecessary hardship = when compliance with the ordinance would:
  - unreasonably prevent the owner from using the property for a permitted purpose, or
  - be unnecessarily burdensome in view of ordinance purposes

Ziervogel v. Washington County Board of Adjustment, 2004 WI Supreme Ct.
What does “unnecessarily burdensome” mean??

- Should an after-the-fact variance be granted for the red porch because its removal would be “unnecessarily burdensome”?
- The WI Supreme Court said NO because the “hardship was self-created and the porch no more than a personal convenience”.

*Snyder v. Waukesha County Zoning Board, 1976*
Unnecessary hardship

- Building inspector missed a setback violation for 2 duplexes

- The duplexes were built and the developer then applied for an after-the-fact variance, which the zoning board granted

- Hardship cannot be self-created or created by a prior owner

Accent Developers, LLC v. City of Menomonie BOA and Timber Ridge Homes LLC, 2007 WI Court of Appeals
Unnecessary hardship

- The court noted there was ample evidence of external causes of the hardship and affirmed BOA’s grant of a variance because the hardship of removing the duplexes was not solely self-created.

- A zoning board may consider an error of local government staff when deciding whether to grant a variance.

Accent Developers, LLC v. City of Menomonie BOA and Timber Ridge Homes LLC, 2007 WI Court of Appeals
Is the hardship...

A personal inconvenience?
A hardship that is necessary to achieve ordinance purposes?

If yes to either question, deny variance.

A hardship that is not necessary to achieve ordinance purposes?
If yes and other 2 variance standards are met, then grant variance.
Variances...

- Loss of profit or financial difficulty do not constitute hardship.
- A variance runs with the property.
- A variance does not create a nonconforming structure.
- Lack of objections from neighbors does not justify a variance.
- Nor do nearby ordinance violations.
Would you grant the variance?
Would you grant a variance for the red addition?

- Steep slope under deck
- Other lake properties also have steep slopes
- High value house
- Owners want to enclose the deck closest to water and add on a garage (G)
- Washburn County applied for a CUP to operate a gravel pit
- County zoning committee granted the permit over the opposition of neighbors
- Osterhues appealed to BOA

*Osterhues v. Board of Adjustment for Washburn County, 2005 WI Supreme Ct.*
How should the BOA proceed?

Fact finding hearing?  Error finding hearing?

Osterhues v. Board of Adjustment for Washburn County, 2005 WI Supreme Ct.
When BOAs hear appeals, they have the authority to:

- Conduct a de novo hearing, and
- Review the record by the PC/ZC, and
- Take new evidence, and
- Substitute their judgment for the zoning committee or zoning administrator’s judgment

**WARNING**

BOA may have to defend its action on an incomplete record if challenged

*Osterhues v. Board of Adjustment for Washburn County*, 2005 WI Supreme Ct.
Section 59.694(8)

**ORDER ON APPEAL.** In exercising the powers under this section, the board of adjustment may, in conformity with the provisions of this section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

- The BOA has all the powers of the zoning administrator and zoning committee & may reverse, affirm or modify decision.
- The BOA does not have authority to remand a decision to the zoning committee.
Decision standards when BOAs review the record

1. Was the decision made by the correct person/body according to the zoning ordinance? Does the ordinance allow for the decision made?

2. Were proper procedures followed?

3. Were the proper standards from the ordinance used?

4. Is there evidence in the record supporting the decision the zoning committee reached? The BOA may take additional evidence. Is there evidence that is new and relevant to ordinance standards?
Administrative Appeals
Administrative Appeals

• Appeal of decision by zoning administrator or plan commission
• Legal process to resolve disputes regarding:
  - Ordinance interpretation (text, maps, jurisdiction, measurements, etc.)
  - Reasonableness of zoning decision (zoning permit, CUP)
Administrative Appeals

Procedure for appeal:

- Notice of appeal filed with administrative officer and BOA
- Action stayed
- BOA provided with record of decision
- Public notice
Administrative Appeals

- Role of BOA:
  - The board functions like a court
  - Its job is to apply the zoning ordinance and appropriate legal standards to the facts of each case
  - The board *does not* have authority to amend or repeal any provision of the zoning ordinance

The applicant has the burden of proof to show that the ZA/PC’s decision was incorrect or unreasonable
When BOAs hear appeals, they have the authority to:

- Review the record/decision OR
- Conduct a de novo hearing,
- Take new evidence, and
- Substitute their judgment for the plan commission or zoning administrator’s judgment

Case law

Osterhues v. Board of Adjustment for Washburn County, 2005 WI Supreme Ct.
Administrative Appeals

• Interpret the ordinance:
  - Establish geographic & activity jurisdiction
  - Determine if ordinance language is ambiguous
Administrative Appeals

Interpret the ordinance:
- Rely on ordinance definitions first, dictionary definitions next
- Review purpose statement for ordinance intent
- Interpret to avoid conflicting language
- Give effect to all provisions
Administrative Appeals

Interpreting evidence beyond ordinance:
- Examine administrative history
- Rely on documented evidence of intent
- Determine objectivity of testimony and interpretations

Keep records of interpretations & recommend clarifying ordinance amendments
Administrative Appeals

Questions to answer in BOA decision:

1. Facts of the situation?
2. Which ordinance provisions apply?
3. Did the ZA/ZC have the authority to make this decision?
4. How were measurements made? Were they consistent with the ordinance?
5. What is the purpose of the ordinance?
6. Documented meaning of ordinance language from past meeting minutes?
7. Definitions of terms from a) ordinance, b) dictionary?
8. What does the provision being appealed from mean?
Appeal of zoning decisions

- Planning & zoning committee
- Board of adjustment/appeals
- Circuit court
- Court of appeals
- Wisconsin supreme court
Standards on judicial review...

Courts defer to local decision makers when these tests are met:

1) **Subject matter jurisdiction**
   Did the body decide a matter that it is empowered by statute or ordinance to act on?

2) **Proper procedures**
   Did the body follow proper procedures (open meeting law, public notice, hearing, record of decision, etc.)?

3) **Proper standards**
   Did the body apply proper standards in making the decision (e.g. 3-step test for a variance)?

4) **Rational basis for the decision**
   Could a reasonable person have reached this conclusion?

5) **Evidence in the record**
   Do facts in the record of the proceedings support the decision?
Recommended Resource

Zoning Board Handbook (CLUE, 2006)

I. Introduction
II. Zoning Board Basics
III. Laws that Apply to the Zoning Board
IV. Zoning Board Decision Process
V. Appeal of Zoning Board Decisions
V. Improving Zoning Board Decisions
VI. Shoreland and Floodplain Zoning
Plus legal resources and sample forms

www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/Zoning.aspx
Thank You!

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