

ZONING BOARD HANDBOOK

**For Wisconsin Zoning Boards of Adjustment and Appeals
2nd Edition**

2006

Lynn Markham and Rebecca Roberts

Cover photos:

Top: Potential land use conflict between gravel pit and adjacent housing. *Photo © Regents of the University of Minnesota. Used with the permission of Metropolitan Design Center.*

Center: Waterfront home in Oneida County lacking shoreland buffer. *Photo courtesy of Robert Korth, UW-Extension Lakes Partnership.*

Bottom: Potential land use conflict between industrial and residential land uses. *Photo © Regents of the University of Minnesota. Used with the permission of Metropolitan Design Center.*

ACKNOWLEDGEMENTS

We gratefully acknowledge the funding provided for this undertaking by the Wisconsin Department of Natural Resources and the University of Wisconsin Extension. We would also like to thank Robert Newby at the Center for Land Use Education for coordinating the layout and design of this handbook.

This is the second edition of the Zoning Board Handbook. The first edition by Michael D. Dresen and Lynn Markham was published in 2001. Both editions are based on educational materials developed by James H. Schneider, Attorney and Local Government Specialist at the UW-Extension Local Government Center.

We would also like to acknowledge those individuals that have reviewed portions of the text or provided examples including Fred Anderson; Jeff Bluske, La Crosse County Zoning and Land Information Department; Dan Bowers, Lincoln County Planning and Zoning Department; Gregg Breese, Wisconsin Department of Natural Resources; Andy Buehler, Kenosha County Department of Planning and Development; James Burgener, Marathon County Conservation, Planning and Zoning Department; Earl Cook; Mike Dresen; JoAnne Kloppenberg, Wisconsin Department of Justice; Pam LaBine, Forest County Zoning Department; Brian Ohm, Department of Urban and Regional Planning, UW-Madison/UW-Extension; Marcia Penner, Wisconsin Department of Natural Resources; Dean Richards, Waukesha office of Reinhart Boerner Van Deuren S.C.; Michelle Staff, Jefferson County Zoning, Sanitation and Solid Waste Department; and Tom Steidl, Wisconsin Department of Natural Resources. While we are grateful for their suggestions and comments, any errors in this edition are the full responsibility of the authors.

ABOUT THE AUTHORS

Lynn Markham is a Land Use Specialist with UW-Extension at the Center for Land Use Education at the University of Wisconsin–Stevens Point. She provides workshops for zoning board members. In addition, she assists communities who want to protect their drinking water, lakes and streams by providing them with research-based information and policy options. She received a Bachelor of Science degree in chemistry from Ripon College and a Master of Science degree in biochemistry from the University of Oregon. She is co-author of *Zoning Nonconformities* and *Protecting Your Waterfront Investment: 10 Simple Shoreland Stewardship Steps*.

Rebecca Roberts is a Land Use Specialist with UW-Extension at the Center for Land Use Education at the University of Wisconsin–Stevens Point. In partnership with local educators, she provides workshops for zoning board members, plan commissioners and other local government officials. In addition, she assists communities with comprehensive planning, public participation and the fiscal impacts of land use decisions. She received a Bachelor of Arts in biology and environmental studies from Augustana College and a Master of Urban Planning from the University of Illinois. She is managing editor of the *Land Use Tracker* newsletter and a contributing author to the *Land Use Resource Guide* and *Land Use Megatrends* series.

Table of Contents



Acknowledgements	<i>ii</i>
About The Authors	<i>ii</i>
Introduction	1
Section I: Zoning Board Basics	
Chapter 1: Introduction to Zoning	5
Elements of a Zoning Ordinance	6
Allowable Uses for each District	7
Relief from Strict Adherence to the Zoning Code	8
Map and Text Amendments	8
Additional Forms of Zoning	8
Zoning and the Comprehensive Plan	9
Chapter 2: Introduction to the Zoning Board	11
Role of the Zoning Board	11
Zoning Board Authority	12
Chapter 3: Formation and Organization of the Zoning Board	15
Considerations for Appointment	17
Appointment of Alternates	17

Table of Contents

Filling Vacancies	18
Removal for Cause	18
Selection and Duties of Zoning Board Officers	18
Section I – Review	21
Section II: Laws that Apply to the Zoning Board	
Chapter 4: Overview of Laws that Apply to the Zoning Board	23
Chapter 5: Open Meetings Law	25
Open Meetings	25
Closed Sessions	26
Public Notification	28
Public Notification of Hearings	30
Violations of the Open Meetings Law	34
Chapter 6: Ethical and Procedural Considerations	37
Zoning Boards Must Follow the Rules of Due Process	37
Zoning Board Members Must Be Impartial	38
If You Are Not Impartial, Recuse Yourself	39
Avoid Ex Parte Communication	40
Provide an Opportunity to Present at Hearings	40
Avoid Statutory Conflicts of Interest	41
Chapter 7: Adoption of Operating Rules	43
Content of Operating Rules	44
Section II – Review	47
Section III: Zoning Board Decision Process	
Chapter 8: Application Process	51
Who completes the application to the zoning board?	52
When do applications need to be complete? Can subsequent changes be made?	52
What is included in a complete application?	53
Who reviews the applications?	56
Are zoning staff reports recommended and what do they contain?	56
Chapter 9: Site Visits	59
What equipment is needed for a site inspection?	60
Must zoning boards comply with the open meetings law during site inspections?	60

Who may access a property for a site inspection?	60
Chapter 10: Meetings and Hearings	61
Zoning Board Hearing Checklist	62
Zoning Board Announcement Of Proceedings	63
Chapter 11: Voting and Recording Decisions	65
How does the zoning board reach a decision?	65
To what extent must zoning board members explain their reasoning for approving or denying an application?	66
How many zoning board members must vote to make a decision?	67
Should a zoning board rehear or reconsider their decisions?	68
What information needs to be in the record?	68
How long must records of the zoning board be kept?	69
Who enforces the decisions of the zoning board?	69
If the Supreme Court changes a legal decision standard after a zoning board decides a case and before that case is remanded back to the zoning board, what decision standard should the board use when reevaluating the case?	69
Section III – Review	71
Section IV: Decisions of the Zoning Board	
Chapter 12: Discretion Associated with Zoning Decisions	73
Chapter 13: Administrative Appeals	77
What is the process for filing an administrative appeal?	79
How are disputes regarding ordinance interpretations resolved?	80
How are disputes regarding boundary interpretations resolved?	83
May a zoning board decision of an administrative appeal be appealed to circuit court?	83
Chapter 14: Conditional Uses and Special Exceptions	85
What is a conditional use?	85
How are conditional uses decided?	86
Who decides whether to grant conditional uses?	86
What conditions may be attached to a conditional use permit?	87
Who decides appeals of conditional use decisions?	89
What standards apply when the zoning board hears an appeal of a conditional use decision?	90
May a conditional use decision by the zoning board or governing body be appealed to circuit court?	91

Chapter 15: Variances	93
What are the criteria for granting a variance?	94
Are multiple variances allowed?	100
What is the process for appealing a variance decision?	101
Why are the standards for area variances different from those of use variances?	101
Area Variances And Use Variances	102
Chapter 16: Accomodations for the Disabled	103
What is a “reasonable accommodation”?	104
What is the recommended approach for providing reasonable accommodations?	104
May local governments impose conditions on accommodations for the disabled?	106
Section IV – Review	107
Section V: Appeal of Zoning Board Decisions	
Chapter 17: Appeal of Zoning Board Decisions	111
What is an appeal?	111
Who may appeal zoning board decisions?	112
How long does a person have to appeal a zoning board decision?	112
What must be done within the 30 day time period to appeal a zoning board decision?	113
If a certiorari lawsuit is filed, what is the zoning board required to do?	113
When a zoning board decision is pending before the circuit court, what may the zoning administrator and zoning board do?	113
What happens to the construction project if the zoning board decision is appealed?	114
What decisions may a circuit court make on appeal?	114
May the circuit court take additional evidence?	115
If the circuit court does not take additional evidence, what standards does the court use in reviewing zoning board decisions?	116
Can zoning board decisions be appealed beyond circuit court?	118
Section V – Review	119
Section VI: Improving Zoning Board Decisions	
Chapter 18: Understanding Who the Zoning Board Works With	121
Planning and Zoning Staff	122
Planning and Zoning Committee/Commission	122
Governing Body (County Board, Town Board, Village Board, City Council)	123
Local Residents	124
Developers, Realtors, Builders, and Other Contractors	125
Attorneys	125

News Reporters	125
UW-Extension Educators	126
Chapter 19: Conducting an Annual Self-Audit	127
Review Zoning Board Decisions	127
Communicate with Plan Committee/Commission	128
Review Informational Materials and Forms	128
Review, Enforcement, and Appeals Procedures	129
Review Rules for Conduct of Meetings and Hearings	130
Review Need for Counsel	130
Take Advantage of Opportunities for Continuing Education	131
Chapter 20: Translating Zoning Board Decisions into Better Zoning Ordinances	133
How can the zoning board and plan committee/commission work together to improve the local zoning ordinance?	134
Section VI – Review	135
Section VII: Shoreland and Floodplain Zoning	
Chapter 21: Shoreland Zoning	139
Where does shoreland zoning apply?	139
Purposes of shoreland zoning	140
How do our shoreland decisions affect property values, water quality, fisheries and wildlife?	140
Minimum statewide shoreland zoning standards	146
For more information about how shoreland management affects lakes and streams, read—	148
Chapter 22: Floodplain Zoning	149
Where does floodplain zoning apply?	149
What are the purposes of floodplain zoning?	150
Section VII – Review	151
Appendices	
Appendix A: Reference Materials	153
Zoning Boards of Adjustment and Appeals	153
Zoning	154
Local Government	154
Planning and Zoning Committees/Commissions	154

Table of Contents

Open Meetings Law	155
Public Records Law	155
Water Law	155
Newsletters	156
Websites	156
Appendix B: Legal Resources	157
State Regulations	157
Local Ordinances	158
Case Law	158
Websites for Accessing Wisconsin Court Decisions	160
Appendix C: Who Decides Whether to Grant Conditional Uses and Special Exceptions	161
Appendix D: Sample Forms	163
Hearing Appearance Slip	164
Administrative Appeal Application	165
Conditional Use/Special Exception Application	166
Variance Application	167
Decision Form	174
Decision Self Audit Form	177
Appendix E: Examples from Wisconsin Communities	179
Agenda and Public Notice	180
Zoning Board Staff Report	181
Variance for reduced roadway setback for deck on tavern - Denied	182
Variance for reduced roadway setback for garage	191
Indices	
Topical Index	199
Case Law Index	203

Introduction



At different points in their lives, people sometimes want more rules and at other times they want fewer rules. They want more rules when the rules apply to what their neighbors can do. And they want fewer rules when the rules apply to what they can do on their own property.
-- A long-time politician from northeast Wisconsin

Many communities use zoning to help them protect the aspects of life that they cherish—from strong communities and scenic vistas to safe drinking water and high quality lakes and streams. Zoning ordinances implement local land use plans that affect many economic and quality of life issues in communities throughout Wisconsin. It takes many groups of people working together to implement zoning effectively and to keep it up-to-date. In this endeavor, zoning boards are essential to the fair and effective administration of these laws as they act like judges to interpret ordinances and uphold the legal standards that were developed to help the community achieve its goals.

This handbook is intended to assist zoning board members with their responsibilities and to aid local government officials and the public in understanding the role of the zoning board and the procedures and standards with which their decisions must comply.

Zoning boards are known by a number of names: boards of adjustment for counties; boards of appeals for cities, villages and towns; or sometimes just the BOA. We will generally refer to them as *zoning boards* in this handbook. We use *plan commission/committee* in a generic fashion to refer to all of the following planning bodies: plan commissions for cities, villages and towns with village powers; planning committees for towns without village powers; and planning agencies (commonly referred to as planning and/or zoning committees) for counties.

Zoning board members should consult their municipal attorney or corporation counsel for advice. In some cases the Wisconsin Department of Justice or a state agency with local program oversight responsibilities may be able to provide information.

Inside the Handbook

The Zoning Board Handbook is organized into the following sections:

- **Section I: Zoning Board Basics** – introduction to zoning and the duties and organization of the zoning board.
- **Section II: Laws that Apply to the Zoning Board** – open meetings law, ethics and operating procedures.
- **Section III: Zoning Board Decision Process** – applications, meetings and decision-making.
- **Section IV: Decisions of the Zoning Board** – legal standards for administrative appeals, conditional uses and variances, plus accommodations for the disabled.
- **Section V: Appeal of Zoning Board Decisions** – procedures and standards used by the circuit court when reviewing zoning board decisions.
- **Section VI: Improving Zoning Board Decisions** – who the zoning board works with, self-audits and improving the zoning ordinance.
- **Section VII: Shoreland and Floodplain Zoning** – purposes, legal standards and management strategies for shoreland and floodplain areas.
- **Appendix** – resources, forms and examples.

At the end of each section there is a list of *key words* and *questions* you should have mastered after reading the section. Use these resources as a checklist to assess your knowledge of zoning boards.

The footnotes provide references to relevant court decisions and other references. In addition, Appendix B provides websites to access the full text of the decisions and summaries of zoning-related court decisions written by the Wisconsin Department of Natural Resources.

Handbook Updates

The Zoning Board Handbook is an evolving document. Please help us keep the handbook up-to-date by letting us know about:

- Errors or omissions
- Unclear language
- Additional topics or questions you would like addressed
- Local examples or case law to illustrate concepts in the handbook

Additional Resources

The following resources are available to supplement the Zoning Board Handbook:

- **Workshops:** The Center for Land Use Education offers zoning board workshops upon request serving multi-county areas of Wisconsin.
- **Videos:** DVD recordings of past zoning board workshops are available from the Center for Land Use Education.
- **Website and Electronic Mailing List:** Updates on recent court decisions and other topics relevant to the zoning board are available on the Center for Land Use Education website: www.uwsp.edu/cnr/landcenter/workshopsdocs.html. You may also sign up by email to receive information about upcoming workshops, revisions to important statutes and case law, and updates to the handbook. Visit our Newsletter web page (www.uwsp.edu/cnr/landcenter/newsletters.html) to subscribe to our electronic mailing list.

Contact Information

If you would like more information or to request additional copies of this handbook, please contact as at:

Center for Land Use Education
University of Wisconsin – Stevens Point
800 Reserve Street
Stevens Point, WI 54481

Phone (715) 346-3783
Fax (715) 346-4038

landcenter@uwsp.edu
www.uwsp.edu/cnr/landcenter/