

Chapter 2

Procedural Responsibilities

LAWS THAT APPLY TO THE PLAN COMMISSION	2
Types of Decisions	
Sources of Guidance	
Rules of Procedure	
MEETING AND HEARING CONDUCT	5
Effective Meetings and Hearings	
Public Hearing Checklist	
OPEN GOVERNMENT	8
Open Meetings Law	
Closed Sessions	
Public Notification	
Voting	
Minutes and Records	
Public Records Law	
DUE PROCESS	15
Ex Parte Communication	
Impartiality	
Recusal	
ETHICS AND CONFLICTS OF INTEREST	18
Statutory Conflicts of Interest	
Ethical Principles in Planning	
ADDITIONAL RESOURCES	20
Recommended Resources	
Hearing Appearance Slip and Announcement of Proceedings	
Code of Conduct and Rules of Procedure	

OVERVIEW OF LAWS THAT APPLY TO THE PLAN COMMISSION

Plan commission members are considered public officials. As officials, they are subject to Wisconsin's open meetings law, public records law, code of ethics and conflicts of interest law.¹ Additional decision-making and procedural standards are determined by the type of decision the plan commission makes.

► Types of Decisions

Plan commissioners must distinguish between the roles they play in order to determine the rules that apply to their decisions. Local land use decisions can be separated into three general categories:

1. Legislative
2. Quasi-judicial
3. Administrative

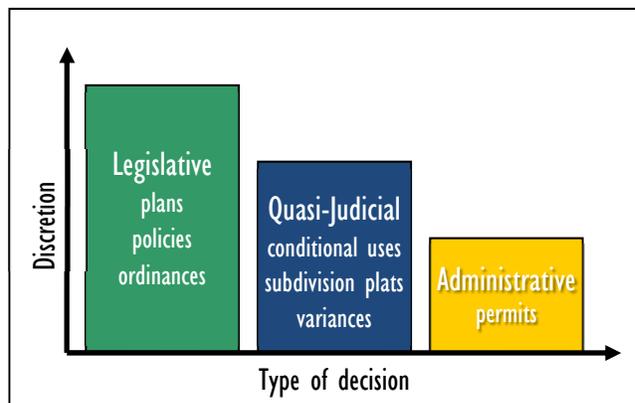
Legislative actions are those which result in policy-making. They affect the community as a whole rather than a small area or a few individuals. The adoption or amendment of plans and ordinances are legislative actions reserved by state law for the elected governing body. When the plan commission makes a recommendation to adopt or amend a plan or ordinance, it also acts in a legislative capacity. Legislative decision-makers are afforded a great deal of discretion. They are limited only by procedural and constitutional concerns. In most cases, they are required or encouraged to involve the public in helping to shape their decisions.

Quasi-judicial decisions involve the application of rules and policies to the facts of a particular development proposal. The plan commission acts in a quasi-judicial manner when it

considers conditional use permits, subdivision plats, variances to a subdivision ordinance, and other similar decisions. Quasi-judicial decisions involve the exercise of some discretion. For example, when deciding whether to grant a conditional use permit, the plan commission has the power to investigate facts, hold hearings, weigh evidence, draw conclusions, and use that information as a basis for their official decision.² Discretion of quasi-judicial decision-makers is strictly limited by local ordinance and related state laws. Quasi-judicial decision-makers must apply the law as written and may not substitute their judgment for that of the governing body.

Administrative or ministerial decisions involve the routine application of adopted rules and standards. Examples include the issuance of zoning permits (permitted uses), building permits and sign permits. Discretion associated with these types of decisions is very limited. In smaller communities, a commission member may actually perform the duties of a zoning administrator or building inspector by accepting petitions and applications, issuing permits and making inspections. This practice reflects the reality of limited personnel and financial resources in smaller communities.

Discretion Associated with Local Land Use Decisions



¹ See Wis. Stat. §§ 19.81-98 (open meetings), 19.21-39 (public records), 19.59 (code of ethics for local officials), 946.12 (misconduct in public office), and 946.13 (private interest in public contracts). Available: <https://docs.legis.wisconsin.gov/statutes/prefaces/toc>.

² *Universal Glossary of Land Use Terms and Phrases*. 1998. Land Use Law Center, Pace University School of Law.

Rules of Procedure

Many procedural issues essential for the conduct of plan commission business are not addressed in state statutes and must be determined by local ordinance or by rules of procedure adopted by the plan commission. Wisconsin Statutes allow plan commissions to establish their own rules for conducting business.³ Common issues typically addressed in plan commission rules are outlined below:

A. Membership

- Desired qualifications
- Appointment of alternates
- Officers, duties, and staff assistance
- Establishment of committees
- Vacancies, resignations and removal
- Compensation

B. Conduct

- Attendance requirements
- Training requirements
- Conflicts of interest and bias
- Ex parte communication

C. Meetings, Hearings and Site Visits

- Meeting time, frequency, location
- Parliamentary procedures
- Quorum
- Order of business
- Authorization for site inspections

D. Decisions

- Voting requirements
- Recording decisions
- Meeting minutes, exhibits and records

When creating rules of procedure or bylaws it is not necessary to restate all applicable state and local rules or case law applicable to the plan commission. The rules of procedure should primarily address issues that are not already addressed elsewhere or that are more restrictive than existing rules. If the plan

³ Wis. Stat. §§ 62.23(2) and 59.69(2)(c) authorize municipal plan commissions and county zoning agencies to prepare rules of procedure. The county board has authority to alter the rules of the county zoning agency.

commission feels it is important to reiterate existing laws, it is best to do so by reference rather than a complete reprinting of the law. That way, if the law is changed, it is not necessary to update the rules of procedure.

A sample code of conduct and rules of procedure are provided at the end of this chapter. These rules may serve as a starting point for preparation of local rules. Planning and zoning staff and legal counsel can provide assistance in drafting rules of procedure that are appropriate for your community. Prior to adoption, rules should be reviewed and agreed upon at a meeting of the plan commission.

Robert's Rules of Order

While it is common for plan commissions to adopt Robert's Rules of Order for the conduct of meetings and hearings, some caution is warranted. Robert's Rules are extremely complicated and establish highly formal processes which make discussion difficult. Furthermore, few people know these rules well enough to use them accurately. When plan commission decisions are challenged in court, the first line of attack is the rule book. Cases can be remanded back to the commission for reconsideration if the rules aren't followed. Training is also needed to properly administer Robert's Rules.

The sample rules of procedure included at the end of this chapter reference Robert's Rules of Order for issues not addressed elsewhere in the bylaws. You may wish to omit this reference or refer to a different parliamentary authority.

The UW-Extension Local Government Center provides training on parliamentary procedure. Its website contains a variety of related resources:

<http://lgc.uwex.edu/OpenGovt/index.html>.

MEETING AND HEARING CONDUCT

► Effective Meetings and Hearings

How well a community accepts a plan commission decision depends on much more than the decision itself. Public relations matter. The actions of plan commission members influence whether citizens feel they were listened to, respected and given fair consideration when the decision was made. Here are some steps commissioners can take at public meetings and hearings to bolster public confidence in the commission and its decisions:⁴

1. **Prepare.** Careful preparation is critical to success. Clarify the goals of your meeting or hearing and hold it early in the decision-making process. Select an appropriate site, line up speakers and facilitators, and prepare government officials. If background materials are to be provided as a handout, use clear, plain language, understandable by everyone.
2. **Publicize.** Outreach efforts can help in getting more people to attend meetings and hearings. Effectively publicize your event using multiple media. Create public interest and educate citizens about what is involved and how they will be affected. Use multiple communication channels to notify, educate, and build interest. Take a look at your community and figure out how people are getting their information. Are notices posted where they are likely to be read? Is the information presented in a format that is likely to be read? (remember that an article, factsheet or story is much more compelling than a posted notice or agenda). Consider placing meeting materials on a website so that they are broadly accessible and can be reviewed in advance.

⁴ Adapted from “Critical Factors for Enhancing Municipal Public Hearings.” William H. Baker, H. Lon Addams and Brian Davis. *Public Administration Review*, Volume 65, Issue 4, July/August 2005.

Public Meeting or Public Hearing?

The distinction between a public *meeting* of a governmental body and a public *hearing* before it is a matter of purpose. A meeting is for the purpose of conducting the business of the body and may or may not involve opportunities for public involvement. A hearing is held for the express purpose of gathering information from the public regarding a pending application, petition or policy proposal. The plan commission may be required to hold a public hearing when developing recommendations on the adoption or amendment of a comprehensive plan or ordinance or when considering an application for a development permit.

3. **Launch.** Many people are unfamiliar with planning and the role of local government. Take time at the beginning of meetings to describe the role of the plan commission, the nature of the decision being made, opportunities to provide public input, and necessary technical or background information. Clearly frame the key issues and use multiple media to help achieve understanding. Describe the procedures to be used during the meeting.
4. **Facilitate.** Well-run meetings influence the overall effectiveness of public involvement. When meetings start and end on time, people are more willing to participate and stay focused on the issues at hand. A skilled chairperson or facilitator is invaluable in running an efficient meeting. Make sure that the facilitator guides and moves the discussion along, clarifying and summarizing main points, assuring citizens of the value of their input, and managing citizens’ emotions. A successful facilitator will be open, unbiased, patient, non-defensive and adaptable.

5. **Listen.** Public meetings should provide meaningful opportunities for communication. When people feel that their comments make a difference, they are more likely to take the time to attend meetings and share their ideas. At the beginning of the meeting, describe how public input will be used. Make sure that members of the plan commission and local governing body carefully listen to and value citizens' comments, remembering that they are community stewards. Reading, sorting through papers, taking a restroom break, or adjusting equipment sends the message that local officials are not listening. Demonstrate you're listening by restating what you've heard from citizens, responding to their comments and following up with

questions. Be honest and forthright, yet respectful and sensitive in your responses.

6. **Follow-up.** Follow up effectively after the meeting. Make sure that public input is recorded and discuss how that input will be used to make decisions. Report back to citizens at subsequent meetings to discuss how their input was used.

Additional information on public involvement is provided in Chapter 4. Information to guide the commission in conducting public hearings is provided in two parts. A checklist for conducting public hearings is provided below. A sample hearing appearance slip and announcement of proceedings are provided at the end of the chapter and may be downloaded from the internet and modified for local use.

Public Hearing Checklist

1. **Prior to meeting.** [designated staff]

- A. Arrange for alternates due to anticipated absence or conflict of interest.
- B. Send the agenda, proposal, and staff reports to commission members.
- C. Comply with open meeting law and public hearing notice requirements.
- D. Arrange for a tape recording of the hearing or a court reporter.

2. **Preliminary matters at meeting.**

- A. Distribute and collect hearing appearance slips. (see example on page 22). [chair]
- B. Call the meeting to order. [chair]
- C. Take roll and confirm that a quorum is present. [secretary]
- D. Confirm compliance with open meetings law and public notice requirements. [commission]
- E. Read the agenda and amend as necessary (reorder hearings). [chair and commission]
- F. Inform the public in attendance of hearing procedures (see script on page 23). [chair]

For Legislative Proceedings: (i.e. plan or ordinance adoption or amendment)

3. **Public hearing.**

- A. Open the public hearing. [chair]
- B. Provide a summary and rationale for the proposal. [commission or staff]
- C. Allow time for group and individual questions and answers. [commission, staff, public]
- D. Request formal statements from the public. [chair]
- E. Close the record and the hearing. [chair]

4. Deliberation and recommendation.

- A. Decide/vote on the proposal.
- B. Forward recommendation to the governing body.

For Quasi-Judicial Proceedings: (i.e. conditional use, variance, rezone of individual property)

3. Public hearing.

- A. Open the first public hearing. [chair]
- B. Read petition or application. [staff]
- C. Report on any site inspection. [secretary or staff]
- D. Request a statement by the applicant. [chair with questions by commission]
- E. Read the staff report. [staff with questions by commission]
- F. Report on related correspondence. [secretary]
- G. Disclose any ex parte communication. [commission]
- H. Request statements of witnesses (pro/con/information). [chair with questions by commission]
- I. Request a response by the applicant (or after each witness). [chair with questions by commission]
- J. Request a response by staff. [staff with questions by commission]
- K. Ask any final questions. [commission]
- L. Close the record and the hearing. [chair]

4. Deliberation and decision or recommendation.

(Note: many plan commissions conduct all hearings before deliberating on decisions)

- A. Findings of fact
 - Determine whether the commission has the authority to make the decision.
 - Determine whether application contains information necessary to make a decision.
 - Record pertinent facts on the decision form and in meeting minutes.
- B. Conclusions of law
 - Specify applicable legal standards (found in state statutes, case law or local ordinance).
 - Determine which facts relate to the legal standards.
 - Determine whether the legal standards are met.
 - Agree on any permit conditions.
- C. Order and Determination
 - Decide/vote on the case.
 - Direct staff to take any necessary action.

5. Repeat steps 3 and 4 for additional hearings.

6. Other agenda items.

7. Adjourn meeting.

OPEN GOVERNMENT**Open Meetings Law**

All plan commission meetings and hearings must comply with Wisconsin's open meetings law.⁵ This law is intended to give the public prior notice of meetings of governmental bodies and to assure that they are held in places that are open and reasonably accessible to the public including those with disabilities. This also means that the facility chosen for a meeting should be sufficient for the number of people reasonably expected to attend.⁶ Some meetings or portions of meetings are permitted to be held in closed session, but generally, discussion and decision-making must be conducted in open session and motions and voting must be open and recorded.

Under the open meetings law, a meeting is a gathering of members of a governmental body for the purpose of exercising responsibilities and authority vested in the body. A meeting occurs when both a purpose test and a numbers test are met:⁷

- **The Purpose Test** is met when discussion, information gathering, or decision-making takes place on a matter within the jurisdiction of the governmental body. This test is met even if no votes are taken; mere discussion or information gathering satisfies the test.
- **The Numbers Test** is met when enough members of the body are present to determine the outcome of an action. By statute, if a quorum is present (generally one-half of the members of the body), there is presumed to be a meeting unless the purpose test is not met. A lesser number of members may also meet the

numbers test if sufficient numbers are present to block a decision (e.g., two members of a five-member commission where four votes are required to carry an issue). This is known as a “negative quorum.”

Phone conferences, chance and social gatherings, and conferences may constitute a meeting if the numbers and purpose tests are met. Phone calls to arrange meeting logistics or gatherings where no official business is discussed do not meet the open meetings test.

A series of gatherings, telephone calls, faxes, e-mails or electronic messages between plan commission members could also constitute an illegal meeting. A series of meetings or discussions, each less than quorum size, to discuss plan commission business (other than logistics) is known as a “walking quorum.” This practice is illegal because it is not noticed and open to the public.

Site inspections by the plan commission must comply with the open meetings law if the purpose and numbers tests are met. If commission members travel to an inspection site together, they should refrain from discussing commission business while in transit. Inspections in which no testimony is taken and no discussions are held constitute meetings if the numbers test is met since their intended purpose is to gather information relating to plan commission business.

Quorum – at least one-half of the members of a body; sufficient to decide most matters.

Negative Quorum – enough members of a body (generally less than quorum) to block a decision.

Walking Quorum – a series of meetings or discussions, each involving less than a quorum, intended to decide a matter.

⁵ Wis. Stat. §§ 19.81-19.98.

⁶ *Badke v. Village Board of the Village of Greendale*, 173 Wis.2d 553 (1993), 580-81.

⁷ *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis.2d 77, 102 (1987); *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis.2d 553 (1993).

Open Session – a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.

Closed Session – a meeting where public attendance is not allowed; must be specifically authorized by state statute.

Wis. Stat. § 19.81-19.98

■ Closed Sessions

Unless specifically exempted by state statute, all meetings of governmental bodies must be open and reasonably accessible to the public. Statutory exemptions most likely to apply to the plan commission include:⁸

- **Deliberation concerning a case.** Deliberation concerning a case that was the subject of a quasi-judicial hearing. The courts have determined a case to be an adversarial proceeding with opposing parties, *not* merely an application for a conditional use permit, variance or administrative appeal. Neighbors or others testifying for or against a matter are not considered parties.⁹
- **Conferring with legal counsel.** Conferring with legal counsel about strategy regarding current or likely litigation.
- **Actions concerning public employees.** Consideration of dismissal, demotion, licensing, or discipline of a public employee or licensee unless the employee or licensee requests that the meeting be held in open session. Consideration of employment, promotion, compensation, or performance evaluation data of a public employee.
- **Potentially damaging personal information.** Consideration of financial, medical, social,

or personal histories or disciplinary data about specific persons that would likely have a substantial adverse effect on the reputation of a person.

- **Request to an ethics board.** Consideration of a request for confidential written advice from a local ethics board.
- **Purchasing and bargaining.** Matters which include business competition or bargaining issues such as public land acquisition or retaining a consultant. The competitive or bargaining issue must relate to reasons benefitting the governmental body, not a private party's desire for confidentiality.¹⁰
- **Other narrow exemptions.** Specified deliberation regarding unemployment and workers compensation, burial sites and other narrow exemptions provided by statute.

Statutes specify procedures that must be followed when convening and participating in a closed session:

- **To enter closed session.** The body must initially convene in open session. To move into a closed session, the presiding officer must announce the specific subject matter and statutory authority for closure. A motion and recorded individual vote by a majority of the body are required to convene in closed session.
- **Attendance at closed sessions.** Only members of the plan commission, the governing body, and those essential to the business for which the session was closed may attend a closed session. The planning or zoning staff person who presented testimony at the hearing and the municipal attorney (if he or she represented the plan commission at the hearing) should not attend closed sessions.

⁸ Wis. Stat. § 19.85(1)(a-j).

⁹ *State ex rel. Hodge v. Turtle Lake*, 180 Wis.2d 62, 508 N.W.2d 301 (1993).

¹⁰ *State ex rel. Citizens v. City of Milton*, 2007 WI App 114, 14-15.

- **Discussions, motions and decisions.** The body may consider only the matter for which the session was closed. Motions and decisions must be recorded. If a decision made in closed session is appealed, the record must contain sufficient detail to show that the plan commission considered the proper legal standards and evidence presented. Where feasible, the plan commission should vote in open session.
- **To reconvene in open session.** Once a body convenes in closed session, it may not reconvene in open session for at least 12 hours, unless public notice of its intent to return to open session was given in the original notice of the meeting. Absent such notice, the body should amend its agenda to place any closed session at the end of the agenda.¹¹ When there is good cause, two-hour prior notice of a planned closed session and reopening can be provided to allow reopening a meeting, but this approach is rarely necessary.

Types of Notice

Some actions of governmental bodies require additional notice or publication beyond what is required of the open meetings law. Refer to state statutes and related sections of this handbook for specific guidance. Three types of notice are typically required for plan commission actions:

Posting – Display of a notice in at least 3 public places likely to give notice to the public and those affected by a decision.

Class 1 Notice – One newspaper publication at least one week before the act or event.

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. §§ 985.02 and 985.07

¹¹ Wis. Stat. § 19.85(2).

Public Notification

All meetings of governmental bodies must be preceded by advance public notice. Following are the minimum notice requirements of Wisconsin's open meetings law.

- **Form of notice.** Notice of public meetings is required and may be accomplished by posting in one or more public places likely to give notice to the public and those affected by the decision; a minimum of three locations is recommended.¹² A public notice may be posted on a government website as a supplement to other public notices, but does not substitute for other methods of notice.¹³ Paid, published notices are not required by the open meetings law. However, where other statutes require paid publication of a hearing or meeting notice, open meetings law requirements may be incorporated into the published notice. In these situations, posting is also recommended.
- **Timing of notice.** Notice of a public meeting must be provided at least 24 hours prior to the meeting. Where such notification is impossible or impractical for good cause, notice may be provided not less than two hours prior to the meeting.
- **Content of notice.** Notice must specify the time, date, place, and subject matter of the meeting; any contemplated closed sessions; and intent to reconvene in open session within twelve hours after completion of a closed session.¹⁴ The meeting agenda may also provide for a period of public comment and discussion. Though most meetings must be open to public attendance, the law does not require all meetings to provide a forum for public comment. Hearings, on the other hand, must include a period for public comment and/or testimony.

¹² 66 Op. Att'y Gen. 93 (1977).

¹³ Peck Correspondence, April 17, 2006. Cited in Wisconsin Open Meetings Compliance Guide, 2010.

¹⁴ Wis. Stat. §§ 19.84(2) & 19.85(2).

- **Specificity of notice.** The public notice must describe agenda items in sufficient detail to allow anyone likely to be affected by a decision to identify those items on the agenda. In the case of a specific development proposal, provide the name of the applicant, property address and a brief description of the proposal. General subject matter designations such as “miscellaneous business,” “agenda revisions,” or “other such matters as authorized by law” should be avoided.¹⁵ Only issues described in sufficient detail in the public notice and agenda may be decided.
- **Notice to 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 governmental unit’s official newspaper, or if none exists, to other media likely to give notice in the affected area.
- **Separate notices.** A separate notice is required for each meeting. A general notice of a body’s upcoming meetings is not sufficient.¹⁶ If a discussion item or decision is continued or postponed for a later date, the item must be fully described in the subsequent meeting notice.
- **Proof of notice.** An affidavit of publication by a newspaper editor or his/her designee showing the name of the newspaper and dates of publication affixed to a copy of the published notice is presumptive evidence of publication.¹⁷ A similar affidavit by a person posting legal notice showing the time, place and manner of posting serves the same function for posted notices.¹⁸

¹⁵ Memo from AG-Lautenschlager to Mr. Charles Rude, Mayor, City of Lake Geneva, March 5, 2004.

¹⁶ 63 Op. Att’y Gen. 509, 512-3 (1974).

¹⁷ Wis. Stat. § 985.12.

¹⁸ Wis. Stat. § 985.02(2)(d).

Tips for Ensuring Compliance

Plan commission members should individually determine compliance with all aspects of the open meetings law. Prior to participating in a meeting or hearing, we recommend that you review the following procedures to ensure compliance:

1. **Determine proper notice.** At the beginning of a meeting, each member of the plan commission should determine whether proper notice was provided. If compliance is questionable, consult your county corporation counsel or municipal attorney.
2. **Limit closed sessions.** Members should vote against convening closed sessions that are not authorized by specific exemptions of the open meetings law. They should also insist that proper procedures be used to close and reopen sessions. Members who vote against convening in closed session may participate in a closed session without liability if it is held.
3. **Document proceedings.** A log or minutes documenting proper notice and recording motions, rationale, and any votes on abbreviated notice, amended agendas, or closed sessions is a useful defense against allegations of open meetings law violations (most often made by the media or persons displeased by a decision).

Members can be sued individually or as a group for alleged violations of the open meetings law. Forfeitures range from \$25-\$300 and may not be reimbursed by the municipality. A court may also void an action taken by a body at an illegal meeting if it finds that the public interest in enforcement of the open meetings law outweighs any public interest in sustaining the body’s decision.

Notice of Plan Commission Meeting and Agenda

Notice

The City of Badgerville Plan Commission hereby provides this written notice and agenda for a public meeting of the Plan Commission to be held on Monday, September 17, 2012 at 7:00 p.m. in City Hall, Room 100, on 1200 Bucky Blvd., Badgerville, Wisconsin. The City Clerk has provided communication of this meeting to the city's official newspaper and to other media that have requested it. The public may provide comments to the Plan Commission where noted on the agenda and upon recognition by the Plan Commission chairperson.

Agenda

1. Call to order.
2. Roll call and verification of quorum.
3. Certification of compliance with public notice requirements.
4. Approval of agenda.
5. Approval of minutes from August 20, 2012 Plan Commission meeting.
6. Public comments.
7. Review site plan for proposed rezoning of property located at 166 Badger Road from A-2 General Farming to B-5 Highway Business. Rezoning will allow existing building to be used for flower shop and storage and include parking for 6 cars. (Parcel # 1234-5678, Dan and Ann Sylvester, owners/applicants).
8. Discuss planning staff recommendations for revisions to the comprehensive plan.
9. Convene in closed session under Wis. Stat. § 19.85(1)(c) for performance evaluation and consideration of compensation of city planner. After completion of its business in closed session, the Plan Commission will reconvene in open session to complete the remaining items on this agenda.
10. Recommendation to the Common Council regarding salary adjustment for the city planner.
11. Set time, date and agenda for the next meeting.
12. Adjourn.

Note: Members of the City of Badgerville Common Council and members of other public bodies may attend this meeting to gather information and participate in discussion. However, no official action will be taken by these bodies.

Requests from persons with disabilities who need assistance to participate in this meeting should contact the City Clerk's office at 345-6789 at least 48 hours in advance.

Meeting notice has been published in the Badgerville Daily Herald and posted in the Badgerville Municipal Building, Post Office and Public Library.

Notice prepared by: Judy Heff, Plan Commission Secretary
Date: September 3, 2012

Adapted from *Understanding Wisconsin's Open Meeting Law, Appendix A: Sample Public Notice/Agenda*. 1994. Burt P. Natkins and James H. Schneider. Local Government Services, Inc.: Oregon, WI.; *Wisconsin Town Law Forms, 19.84 Notice of Town Board Meeting and Agenda*. April 2012. State of Wisconsin.; and *Agendas and Minutes for Local Government*. [PowerPoint Presentation]. 2006. Dan Hill. Local Government Center.

Voting

With limited exceptions, the plan commission must vote in open session.¹⁹ In the absence of specific guidance provided in state statutes, local ordinances or rules of procedure, routine and non-controversial items may be approved by unanimous consent (i.e. “Is there any objection to approving the minutes as distributed? Hearing none, the minutes are approved.”) A voice vote or roll call vote is recommended for taking action on resolutions, applications and petitions (i.e. “Those in favor say *aye*. Those opposed say *nay*.”)²⁰

Generally, a simple majority of quorum is sufficient for the plan commission to decide an issue. However, some local ordinances require a supermajority or majority of the full plan commission to vote in favor of a specified measure.

Minutes and Records

The plan commission is required to keep a record of its resolutions, transactions, findings, and determinations.²¹ While it is not necessary to create an actual tape or transcript of most meetings, we recommend doing so in the case of quasi-judicial hearings. A transcript of the proceedings provides a record of the rationale for decisions and is useful for later legal review if a decision is appealed in court. Other records that should be preserved include the application, evidence submitted as part of the application (i.e. photos, sketches, letters, emails, audio tapes, video tapes), oral and written testimony, and other information that was considered in decision-making. Meeting minutes should also be taken for all plan commission meetings. The minutes should

record the subject matter of discussions, and all motions, seconds and votes, including absences and abstentions. To comply with the open meetings law, the minutes should also record proper notice and reasons for going into closed session. Responsibility for taking meeting minutes may be assigned to a plan commission secretary, designated staff person or municipal clerk.

Content of Meeting Minutes

Robert’s Rules of Order recommends that meeting minutes include:

- Name and type of meeting.
- Date, time and place of meeting.
- Name of the chair and secretary or their substitutes.
- Names of members attending and whether a quorum was present.
- Names of guests and their subject matter. You may circulate a sign-in sheet and attach it to the minutes.
- Record of action taken on the minutes from the previous meeting.
- Exact wording of each main motion as it was voted on with the name of the motion-maker and whether the motion passed or failed. If the vote on the motion was counted, the count should be included.
- Reports should include the name of the person presenting the report, the subject of the report, and any action taken. If a written report is provided, it should be attached to the minutes or the minutes should describe where the report is located.
- Other actions, assignments, deadlines, resolutions, and recommendations can be briefly recorded.
- Secretary's signature once the minutes have been approved.

See Robert’s Rules of Order Newly Revised, 11th Edition or www.rulesonline.com/rror-10.htm.

¹⁹ Wis. Stat. § 19.88(1)-(3). Unless specifically provided by statute, secret ballots may only be used to elect officers of the body. Any member of the plan commission may request that individual votes be recorded on a matter. Motions and roll call votes must be recorded and open to public inspection.

²⁰ *Voting Procedures for Local Government Bodies*. 2003. Larry Larmer. Local Government Center. <http://lgc.uwex.edu/publications/publs.html>.

²¹ Wis. Stat. §§ 59.69(2)(c) and 62.23(2).

Public Records Law

Wisconsin's public records law establishes rules and regulations concerning public inspection and copying of government records. The purpose of the public records law is to ensure that citizens have access to information regarding the affairs of government, consistent with the conduct of governmental business.

The law provides that any person has the right to inspect and obtain a copy of a public record. Public records include every form of information created or kept by a municipal department, office, committee, board, commission or officer. This includes handwritten and printed pages, maps, photographs, e-mail messages, audio and video recordings, and CD-ROMs. The public record does not include draft documents prepared for personal use or material that is purely personal property.

Noted exceptions to the public records law include:²²

- Information connected with a complaint, investigation or other circumstances that may lead to an enforcement action or other litigation.
- Information that, if disclosed would endanger an individual's life or safety, identify a confidential informant or endanger the security of designated institutions.
- Some information from closed sessions. The records custodian may refuse to permit the inspection of a record from a closed session if the need for secrecy continues and if sufficient reason is given consistent with the law. However, once the underlying purpose for the closed session ends, the record must be released. Information from a closed session is not exempt simply because a valid closed session was held.

In most communities, the municipal clerk is designated the custodian of public records. If a record contains information that is subject to disclosure under the public records law as well as information that may be withheld, the custodian must delete or black-out the information not subject to disclosure before releasing the record. The custodian is not required to create a new record or document in response to a public records request. The custodian may also charge a reasonable fee for locating and duplicating a record.

Most public records must be kept for a period of seven years. However, tape recordings taken for the purpose of creating meeting minutes may be destroyed 90 days after approval of the minutes.²³

Advice on the open meetings and public records law is available from your county corporation counsel, municipal attorney or the Wisconsin Department of Justice: www.doj.state.wi.us. The full text of these laws may be found in *Wisconsin Statutes* §§ 19.81-19.98 (open meetings) and 19.31-19.39 (public records) and may be accessed online: <https://docs.legis.wisconsin.gov/statutes/prefaces/toc>.

²² Wis. Stat. § 19.35(1) and 19.36.

²³ Wis. Stat. §§ 19.21(4)(b) & (7).

DUE PROCESS

Adoption of plans, ordinances and other legislative proposals related to land development standards are generally subject to intense public scrutiny because they affect private property rights, personal wealth and other closely held values. Our democratic system of government encourages public discussion of pending legislation. It is perfectly acceptable for individual community members and special interest groups to lobby elected officials for support or opposition of local legislative proposals. However, once proposed policies are adopted and become law, government bodies such as the plan commission must apply them in full view of the public following legal rules of fair play known as due process.

Quasi-Judicial Decision-Makers Must Follow the Rules of Procedural Due Process

Not all government actions require compliance with procedural due process principles. A rule or law that applies generally does not trigger due process guarantees. Instead, procedural due process requirements are demanded of government only in cases where the government makes an individualized determination affecting specific individuals or a limited identifiable class of people.²⁴ In other words, the rules of procedural due process apply to quasi-judicial decision-makers.

²⁴ Blaesser, Brian W. et al. *Land Use and the Constitution: Principles for Planning Practice*. 1989. Planners Press. pp.42-43; Hunter, Ted and Jim Driscoll. "The Planning Commissioner as Judge." *The Commissioner*, Summer 1996; *Old Tuckaway Assocs. Ltd. Partnership v. City of Greenfield*, 180 Wis.2d 254, 509 N.W.2d 323 (Ct. App. 1993); Stephens, Otis and John Scheb. *American Constitutional Law*, 3ed. 2003. Belmont, CA: Wadsworth.

²⁵ Fourteenth Amendment to the U.S. Constitution and Article I, Section I of the Wisconsin Constitution.

Due process is a basic concept of fairness in legal proceedings that has its roots in the decision making processes used by the Greeks and Romans. It is also reiterated in the constitutions of the United States and Wisconsin.²⁵ These constitutional provisions guarantee two distinct forms of due process: substantive and procedural. Substantive due process is concerned with the reasonableness of government action and focuses on assessing the rationality of a government decision. Procedural due process, the focus of this section, is concerned with the means employed to make a government decision.

When the plan commission makes a decision that affects specific individuals (i.e. conditional use, plat review, etc.), it must follow the rules of procedural due process. These rules include:²⁶

- Providing adequate notice of pending decisions to affected persons.
- Ensuring that each decision maker is impartial and unbiased.
- Avoiding and disclosing ex parte contacts.
- Providing an opportunity to present at hearings.
- Basing decisions on clear, pre-existing standards and factual evidence in a record that is available for review.

Ex Parte Communication

Commission members should not have conversations or receive correspondence regarding a quasi-judicial matter that is pending before the commission or which may come before the commission except during a noticed meeting or hearing on the matter. Such outside contacts are known as "ex parte communication." Ex parte communication

²⁶ *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (U.S. 1915) and *Londoner v. Denver*, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (U.S. 1908) cited by Olson, Daniel M. "Procedural Due Process: The Basics plus Town of Castle Rock." *The Municipality*. December 2005. League of Wisconsin Municipalities.

may not be considered in decision-making unless it is disclosed and made part of the official record in the matter. The commission as a whole can then determine the admissibility of the information and individual members can determine its credibility and weight in deciding their vote on the issue.

The reason for exclusion of *ex parte* information is that parties are entitled to know and examine the source of information used by the commission in its decision-making. Outside discussion regarding procedural matters such as scheduling a meeting or explaining how to file an application is permissible. *Ex parte* communication is not a concern when enacting legislation (i.e. plan or ordinance adoption) or making administrative decisions (i.e. issuing simple zoning or building permits).

Ex Parte - without the other party being present. Tips for handling *ex parte* communication are provided below:

- Avoid *ex parte* communication by suggesting that members of the public present information in an open meeting or hearing or submit a written comment.
- Disclose *ex parte* communication at an open meeting or hearing and make the information part of the record so that it can be considered in decision-making.

▮ Impartiality

Procedural due process requires that plan commission members acting in a quasi-judicial manner be impartial, that is, free of bias and conflicts of interest. Here are two examples of how the courts determined that a land use decision maker was not impartial:

- A zoning board member made negative comments about the applicant and her request, referring to it as a “loophole in need of closing.” The court determined the

applicant was deprived of a fair hearing and required a rehearing without the participation of the member.²⁷

- A county zoning committee member, who was also a town board chair, co-signed a letter as town board chair expressing his positive opinion of a gravel company. The gravel company later applied to the county for a conditional use permit and included the town chair’s letter as part of the application. When the town board chair/county zoning committee member voted to grant the conditional use permit, the court determined he was an advocate who had demonstrated an impermissibly high risk of bias.²⁸

Local land use decisions are particularly vulnerable to concerns about impartiality because decision-makers are local residents with numerous social and economic ties to their community. It should be noted, however, that personal opinions about specific land use regulations or planning in general do not necessarily disqualify a plan commission member from participating in a matter.

▮ Recusal

For each request before the plan commission, individual commission members must decide for themselves whether their relationships or interests could bias their judgment or present an appearance of bias. We recommend that plan commission members use the “sniff test” when determining whether they are biased or impartial. If it would smell fishy for you to vote on the matter at hand, recuse yourself. Another way to determine if you are impartial *and* appear impartial is to think about whether you would be comfortable if the headline in your local newspaper described your background, your personal and professional

²⁷ *Marris v. Cedarburg*, 176 Wis. 2d 14, 498 N.W.2d 842 (1993).

²⁸ *Keen v. Dane County Bd. of Supervisors*, 2004 WI App 26, 269 Wis. 2d 488, 676 N.W.2d 154.

relationships, and your participation or vote on the matter at hand. If you are unsure, you should discuss the matter with legal counsel.

If, as a plan commission member, you do not feel you can be and appear impartial in a given decision, the best approach is to recuse yourself. To recuse yourself, do not vote *and* do not have any discussion or involvement in the matter in question. We recommend that you physically remove yourself from the table where the plan commission is seated while the matter is discussed to make it clear you are not serving as a member of the commission. The

meeting minutes should reflect that you have recused yourself. If you have recused yourself on the matter, you may offer testimony as a member of the public.

Recuse – to disqualify oneself from *all* official participation in a matter, usually because of a conflict of interest or prejudice. If you recuse yourself:

- Do not vote AND
- Do not discuss the topic as a member of the plan commission.

What rules apply when faced with the rezoning of an individual property?

Rezoning is a grey area of the law. In some states they are treated as quasi-judicial, but in Wisconsin they are viewed as legislative. The League of Wisconsin Municipalities recommends a conservative approach is to treat rezonings—particularly those that apply to individual properties—as quasi-judicial decisions.²⁹ This means that the rules of procedural due process apply, including the need for an impartial decision-maker.

In deciding whether to participate in a rezoning decision, the Local Government Center suggests analyzing whether an individual decision-maker would be affected by the rezoning to a greater extent than others in the community. If, for example, your next door neighbor is asking for the rezoning, you should abstain from any official involvement. If, however, the rezoning is for a major project that affects the entire area where you live and you are not affected more than others, it seems legitimate for you to take part in the decision.³⁰

May a person vote on an issue twice when serving on both the plan commission and governing body?

A governing body member who serves on the plan commission is disqualified from participating in a quasi-judicial decision that comes before the governing body if the member voted on the matter when it was before the plan commission. A governing body member in the same circumstances would not be precluded from voting on a legislative matter, such as a rezoning, since the requirement of an impartial decision-maker does not apply to legislative decisions.³¹

²⁹ Witynski, Curtis. “Impartiality in Zoning Decisions.” *The Municipality*, May 2000. League of Wisconsin Municipalities.

³⁰ *Ethics & Conflicts of Interest—FAQs*, James H. Schneider, J.D. April 2008. Local Government Center. The Wisconsin Ethics Board (now GAB Ethics Division) has noted in recent opinions that common law principles may disqualify a member of a body from voting on a matter where the member has a direct pecuniary interest not shared by others similarly situated. See, e.g., *Wis Eth Bd* opinions 200309 and 200317 (citing *Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879) and 36 *Op. Att’y Gen.* 45, 46 (1947)).

³¹ League of Wisconsin Municipalities. Legal Caption 445. 3/31/00.

ETHICS AND CONFLICTS OF INTEREST

▮ Statutory Conflicts of Interest

Wisconsin Statutes contain specific conflict of interest provisions that apply to plan commission members and other local officials regardless of the type of the decision-making they participate in. Two primary provisions that apply to the plan commission include:³²

- **Personal financial gain** – State law prohibits public officials from taking official action that substantially affects a matter in which the official, an immediate family member or an associated organization has a substantial financial interest. Similarly, an official may not use public office for financial gain or to gain anything of substantial value for the official, an immediate family member or an associated organization. Compliance with the statute will protect a member from prosecution under the statute but does not assure compliance with other fair play and due process requirements.
- **Private interests in public contracts** – State law also provides for felony prosecution of a public official who engages in specified activities related to public contracts in which the official has an interest. This is an issue, for example, where the commission decides conditional use permits or retains consulting services where a member has an interest. In certain cases abstention will not prevent a violation of the law and the official will have to choose between doing business with the governmental unit and serving as an officer.

In Summary:

- Don't participate in decisions that affect you financially.
- Don't accept items or services offered to you because of your position.

▮ Ethical Principles in Planning

The American Planning Association maintains a set of ethical principles to guide the conduct of all who participate in the planning process as advisors, advocates and decision-makers. These principles should be used by certified and practicing planners, appointed and elected officials, and others who participate in the process of planning. The plan commission is urged to discuss and consider adopting these principles.

Key elements include:³³

- Serve the public interest.
- Recognize the rights of citizens to participate in the process.
- Give full, clear and accurate information.
- Expand choice and opportunity for all persons, including the disadvantaged.
- Assist in the clarification of community goals, objectives and policies.
- Make information available to the public in advance of decisions.
- Protect the integrity of the natural and built environment.
- Pay attention to the interrelatedness of decisions and long-range consequences.
- Achieve high standards of proficiency and integrity.
- Exercise fair, honest and independent judgment.
- Disclose all personal interests, defined broadly.
- Abstain from participation when you have a personal interest.
- Seek no gifts or favors.
- Do not participate as an adviser, decision-maker, or advocate on a policy decision in which you have previously been an advocate.
- Do not use or disclose confidential information.
- Do not misrepresent facts.
- Do not participate unless you are prepared.
- Respect the rights of all persons.

³² Wis. Stat. §§ 19.59 and 946.13.

³³ www.planning.org/ethics/ethicalprinciples.htm.

Scenario — Conversations about Development

A plan commission member runs into a citizen at the local market who says, “Wildwood subdivision is really going to ruin that part of town.” “Why?” asks the plan commissioner. “Well, it’s going to break up a large area of winter deer habitat, and you’ll be able to see all those houses from miles away.” The plan commissioner replies, “We might not be able to do anything about this project, but perhaps we need to write some regulations that impose stricter controls on sensitive wildlife areas in town.”

These are the types of conversations plan commissioners might have with their constituents in order to plan for the future. Part of planning for the future involves keeping land use regulations current with trends in land development and with the desires of the community.

However, if the same commissioner will be reviewing the subdivision as part of a plat approval process, the above conversation would be wholly inappropriate. In that context, the commissioner should simply say, “I’m sorry, I can’t discuss this with you unless we’re in an open public hearing. It’s not fair to others who may be interested in the case for me to speak about it with you.” This conversation might be difficult for plan commission members, particularly in small towns, but it’s the only proper way to handle the situation should it arise.

Adapted from *Essentials of Planning and Regulation*, 2007, Vermont Land Use Education and Training Collaborative. www.vpic.info/pubs/essentials

Scenario — My Brother, the Developer

Your brother has made a small investment in a real estate development that will come before your commission for approval. No one knows that your brother is involved in the project. You believe it is a good proposal and that your brother’s influence has led to a good design. What should you do?

1. Disclose the personal interest and recuse yourself from the case.
2. Disclose the personal interest, speak in favor of the proposal, but then abstain from voting.
3. Disclose the personal interest, but vote on the case because you do not benefit from it financially.
4. Vote on the request because you do not benefit from it financially.

Things to consider:

- You may not realize that your brother has influenced your opinion, since you are around him so much.
- Even if you decide not to participate, your relationship with board members might taint the opinions of others on the board or the public.
- If this is a good proposal, the commission will recognize that. There is no reason to jeopardize your credibility.
- American Planning Association’s Ethical Principles in Planning require that you disclose all personal interests. APA recommends that potential benefits to a family member (even if not part of your household) should be considered a personal interest.
- Local bylaws regarding ethics and conflicts of interest may contain similar language.

Would your answer be different if it were not your brother, but a good friend or neighbor?

Adapted from *Indiana Citizen Planner’s Guide: Part 6, Ethics*. K. K. Gerhart-Fritz, AICP. Indiana Planning Association. www.indianaplanning.org/associations/9760/files/6_Ethics_2005.pdf

RECOMMENDED RESOURCES**Local Government**

Wisconsin Town Officer's Handbook. 2nd edition. 2006. 292 pages. James H. Schneider and Richard Stadelman (Eds). Available from the Wisconsin Towns Association at (715) 526-3157 or online: www.wisctowns.com.

Handbook for Wisconsin Municipal Officials. 2002. 315 pages. Available from the League of Wisconsin Municipalities at (608) 267-2380 or online: www.lwm-info.org.

Wisconsin County Supervisor's Handbook. 2009. 164 pages. Available from the Wisconsin Counties Association at (866) 404-2700 or online: www.wicounties.org.

Meeting Conduct

Public Participation in Local Government Body Meetings. 2006. 3 pages. Larry Larmer. Local Government Center (Fact Sheet #20). Available online: <http://lgc.uwex.edu/publications/publs.html>.

Agendas and Minutes for Local Government. 2006. Dan Hill. Local Government Center (PowerPoint Presentation). Available online: <http://lgc.uwex.edu/publications/publs.html>.

Voting Procedures for Local Government Bodies (FAQs). 2003. 2 pages. Larry Larmer. Local Government Center. Available online: <http://lgc.uwex.edu/publications/publs.html>.

Open Meetings

Wisconsin Open Meetings Law. 2010. 10 pages. James H. Schneider and Philip J. Freeburg. Local Government Center (Fact Sheet #1). Available online: <http://lgc.uwex.edu/publications/publs.html>.

Wisconsin Open Meetings Law: A Compliance Guide. 2010. 26 pages. J. B. Van Hollen. Wisconsin Department of Justice. Available online: www.doj.state.wi.us/site/ompr.asp.

Public Records

The Wisconsin Public Records Law. 2004. 10 pages. James H. Schneider. Local Government Center (Fact Sheet #7). Available online: <http://lgc.uwex.edu/publications/publs.html>.

Wisconsin Public Records Law: Compliance Outline. 2010. 55 pages. J. B. Van Hollen. Wisconsin Department of Justice. Available online: www.doj.state.wi.us/site/ompr.asp.

Ethics and Conflicts of Interest

Ethics & Conflicts of Interest (FAQs). 2008. 12 pages. James H. Schneider, J.D. Local Government Center. Available online: <http://lgc.uwex.edu/publications/publs.html>.

Advice on ethics and conflicts of interest are available from your county corporation counsel, municipal attorney or the Wisconsin Government Accountability Board (<http://gab.wi.gov/ethics>).

PLAN COMMISSION FORMS

The forms at the end of this chapter can be used by communities looking to establish or fine-tune the operation of their plan commission. Each form can also be downloaded in Microsoft Word format from the Center for Land Use Education website: www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx



Hearing Appearance Slip



Announcement of Hearing Proceedings



Plan Commission Code of Conduct



Plan Commission Rules of Procedures

Hearing Appearance Slip

Date: _____

Hearing name/number: _____

Regarding: _____

Name: _____

Address: _____

Representing: _____

- I wish to speak in favor of the application.
- I wish to speak in opposition of the application.
- I wish to speak for informational purposes only.

Comments: _____

(Tear off this portion and deliver to the plan commission chair)

Instructions for Witnesses

- Complete a hearing appearance slip and deliver it to the plan commission chair.
- You will be recognized by the chair when it is your turn to speak.
- Your testimony may be sworn if required by plan commission rules.
- Direct all comments, questions and replies to the chair.
- When asked to speak:
 1. State your name and place of residence.
 2. Indicate whether you represent a group or association.
 3. Indicate whether or not you favor or oppose the application or are speaking for informational purposes only.
 4. Please state your qualifications to speak on this matter or the source of your information.
 5. Limit your testimony to facts relevant to the case at hand.
 6. Limit your comments to the time period specified by the chair.
 7. Avoid repetitive testimony.

Announcement of Hearing Proceedings

Role of the Plan Commission

The plan commission makes recommendations to the governing body on the adoption and amendment of community plans, official maps, ordinances and other matters. When considering a specific development proposal such as a conditional use, variance or other approval, the plan commission functions like a court. In this situation, the plan commission does not have authority to amend or repeal any provision of an ordinance. Its job is to apply ordinances and appropriate legal standards to the facts of each case. If site plan approval is required in addition to a zoning map or text amendment, that approval is a separate decision that will be considered if approved by the governing body.

Purpose of Public Hearing

The purpose of a public hearing is to give a full and fair hearing to any person affected by the plan, ordinance or other matter under consideration prior to a final governmental decision. Proposals can be changed before a final decision is made on the matter. Hearings are open to the public and prior notice of hearings is provided. A taped recording is being made of the proceedings (or a reporter is recording the proceedings).

Order of Events for Hearings

Each hearing will be opened with a summary of the petition for ordinance or plan amendment or a reading of the application or request. Time will then be provided for questions and answers to clarify the proposal. The site inspection report (if any) will then be read. The applicant/appellant's statement and the staff report (if any) will each be followed by related commission questions. Witness testimony (from those who have submitted appearance slips and alternating among those in favor, those opposed, and those appearing to provide information) are next, followed by related commission questions and responses from the applicant and staff.

If the commission has all of the necessary facts, it will close the record and may deliberate and decide this matter before proceeding to the next hearing or may decide it at a later time. Decisions will be reduced to writing, filed in the planning and zoning office and mailed to parties in interest as soon as practicable. Minutes of commission meetings and decisions will be available in the planning and zoning office approximately (2 weeks) after the hearing.

Instructions for Witnesses

Anyone wishing to speak should complete a hearing appearance slip and deliver it to the plan commission chair/secretary. You must be recognized by the commission chair in order to speak. When called upon as a witness, you will be put under oath (if required by commission rules). Please address your comments and questions to the chair and state:

- Your name and place of residence,
- Whether you represent a group or association,
- Your qualifications to speak on this matter and the source of your information,
- Whether you favor or oppose the proposal or are only providing information, and
- Your concerns about the proposal and other pertinent information.

Please confine your testimony to facts related to the case at hand and avoid repetitive testimony. You will be limited to (5 minutes).

Any permission to develop granted by a decision of the commission must be authorized by obtaining the necessary building, zoning, and other permits. Construction must be substantially completed within (12 months) of the date of the commission's decision. This period will be extended if a court order or operation of law postpones the final decision and may be extended for other good cause. Permission to develop may be revoked for violation of any of the conditions imposed by the commission. The applicant will be given notice of the violation and an opportunity to be heard.

Appeal of Plan Commission Decisions

A decision of the plan commission regarding a conditional use or other approval may be appealed as provided by ordinance by filing an appeal stating reasons for contesting the commission's decision with the office of the (body) within (30 days) of notice of the decision. An applicant that commences construction prior to expiration of the appeal period assumes the risk of having the plan commission decision overturned.

Recommendations of the plan commission regarding plan or ordinance adoption or amendment cannot be appealed because they are not final governmental decisions. In these cases, members of the public should direct comments to both the plan commission and the community's governing body.

Contested Cases

[Modify the announcement above for hearings conducted as contested cases. For example, the commission may decide to conduct a hearing on a conditional use or other development approval as a contested case at the request of an applicant.]

A contested case is a proceeding in which:

- Testimony is taken under oath,
- Parties have a right to review and object to evidence presented by other parties,
- Objections are entered in the record, and
- Parties may cross-examine witnesses who present testimony.

In contested cases, a party may object to the introduction of written materials or photographs as evidence unless they are given an opportunity to question the writer/photographer and to provide a written reply regarding the evidence. Contested cases usually include a complete written record of the proceedings (often by a court reporter).

Plan Commission Code of Conduct

Appointed members of the City/Village/Town/County of _____ Plan Commission agree to abide by the following Code of Conduct.

As a member I will:

1. Represent the Plan Commission with dignity and pride by conducting myself in a business-like manner and respecting the rights and opinions of the public and other members of the Plan Commission.
2. Read, respect, and enforce the rules, policies, and guidelines established by the Plan Commission and the City Council/ Village Board/Town Board/County Board.
3. Read and become familiar with local plans, ordinances, and other documents which relate to Plan Commission functions.
4. Continue to gain knowledge and understanding of planning issues which affect the community through self-study, inquiries and appropriate training.
5. Attend meetings of the Plan Commission on a regular basis and provide prior notification of any necessary absences.
6. Read meeting material packets ahead of time and come prepared to participate in meetings.
7. Participate in Plan Commission deliberation at meetings and hearings and refrain from making decisions until adequate information has been provided.
8. Give full consideration to all aspects of a project and make decisions based upon the best interests of the entire community.
9. Represent the official position of the Plan Commission when authorized to speak on behalf of the Commission.
10. Treat fellow officials, staff and the public with courtesy, even when we disagree. Insulting, profane or excessively argumentative language or conduct will not be tolerated.
11. Refrain from situations which might appear to compromise my independent judgment (including but not limited to situations involving ex parte communication, conflicts of interest, voting on the same issue twice by virtue of serving on two different bodies, participating in a decision for which I previously served as an advocate, and accepting gifts).
12. Read and abide by the State of Wisconsin *Code of Ethics for Local Government Officials* (Wis. Stat. s. 19.59) and the American Planning Association *Ethical Principles in Planning* (available at: www.planning.org/ethics/ethicalprinciples.htm).

Signature _____ Date _____

Adapted from *Sample Planning Commission and Zoning Board of Appeals Code of Conduct*. Kurt H. Schindler. 2008. Michigan State University Extension Land Use Series #8. and *Planning Commissioner's Handbook*, "Public Service Values for Commissioners." League of California Cities. 2004.

Plan Commission Rules of Procedure

SECTION I AUTHORITY AND PURPOSE

The following rules of procedure are hereby adopted by the City/Village/Town/County of _____ Plan Commission. The Plan Commission has been established pursuant to Section _____ of the Wisconsin Statutes and Section _____ of the City/Village/Town/County of _____ Ordinance, and assumes thereby, all responsibilities, duties and powers as provided therein. These rules supplement the provisions of state statutes and local ordinances as they relate to the procedures of the Plan Commission.

SECTION II MEMBERSHIP

- A. Selection of Members. Members of the Commission are appointed by the Mayor/Village President/Town Board Chair/County Board Chair with input from the Governing Body and Plan Commission. The following criteria will be considered when selecting members: [Examples follow]
1. Geographic or jurisdictional diversity
 2. Demographic diversity
 3. Planning skills or expertise
 4. Interpersonal and decision-making skills
 5. Commitment to community service
- B. Alternates. [optional] Two alternates will be appointed to serve on the Plan Commission. The first alternate shall act when a regular member of the Plan Commission is unable to act due to conflict of interest or absence. The second alternate shall act when the first alternate or multiple members of the Plan Commission are unable to act. [Insert expectations for attendance, training, etc.]
- C. Vacancies. Plan Commission vacancies are filled for the remainder of a term. If a vacancy occurs, the City/Village/Town/County Clerk will announce the vacancy and the procedures and deadline for applying for the position. A committee comprised of the Mayor/Village President/Town Board Chair/County Board Chair and ____ (number) Plan Commission members will review the applications/letters of interest and/or interview the applicants. The Mayor/Village President/Town Board Chair/County Board Chair will make the final selection and appointments.

SECTION III OFFICERS AND COMMITTEES

- A. The Chairperson shall be appointed by the Mayor/Village President/Town Board Chair/County Board Chair and shall preside at the meetings of the Commission, supervise the work of the Secretary, and decide all points of procedure unless otherwise directed by a majority of the Commissioners present.
- B. The Vice-Chairperson shall be elected by members / appointed by the Chairperson at the first meeting of the Commission in May of each year. The Vice-Chairperson shall act in the capacity of the Chairperson in his or her absence.
- C. The Secretary shall be elected by members / appointed by the Chairperson at the first meeting of the Commission in May of each year. The Secretary shall prepare all correspondence for the Commission; receive and file all referrals, applications, papers,

and records; prepare, publish, and mail all notices required; and prepare and keep all minutes and records of the Commission's proceedings.

- D. The Planning Director / Zoning Administrator / Building Inspector or his or her designee shall attend all meetings for the purpose of providing technical assistance when requested by the Commission.
- E. Standing or Special Committees may be appointed by the Chairperson. Committees shall be charged with duties of examination, investigation and inquiry related to one or more subjects of interest to the Plan Commission. No committee shall have the power to commit the Plan Commission to the endorsement of any plan or program without submission to the Plan Commission for consideration.

SECTION IV CONDUCT OF MEMBERS

- A. Attendance. Plan Commission members shall notify the Chairperson or Secretary as soon as possible regarding an absence. If any member of the Commission is absent from ____ (insert number, i.e. 3) consecutive regularly scheduled meetings, that member shall be considered delinquent. Delinquency shall be grounds for the Governing Body to remove the member for nonperformance of duty or misconduct upon public hearing from the Commission. The Secretary or a designated recorder, shall keep attendance records and shall notify the Governing Body whenever any member of the Commission is absent from ____ (insert number, i.e. 3) consecutive regularly scheduled meetings, so the Governing Body can consider further action allowed under law.
- B. Participation. Plan Commission members shall participate in all proceedings except in the case of a conflict of interest, a disqualification, an excused absence, or other manifest inability to serve.
- C. Training. Members are encouraged / required to attend at least ____ (insert number, i.e. 2) hours of training per year with instruction from one or more of the following: Wisconsin Towns Association, Wisconsin Counties Association, League of Wisconsin Municipalities, Wisconsin Chapter of the American Planning Association, Center for Land Use Education, Local Government Center, County Planning & Zoning Offices, County Extension Offices, and other related organizations.
- D. Conflicts of Interest. Plan Commission members shall avoid issuing, deliberating, voting or reviewing cases which present a conflict of interest. As used here, a conflict of interest includes, but is not necessarily limited to situations:
 - 1. concerning the member or the member's spouse, child, step-child, grandchild, parent, brother, sister, grandparent, in-law, or household members.
 - 2. concerning work on land owned by the member, located adjacent to, or within ____ (insert distance, i.e. 300 feet) of one's property.
 - 3. which result in actions that have a financial benefit to the member.
 - 4. involving a corporation, company, partnership, or any other entity in which the member is a part owner, or any other relationship where the member may stand to have a financial gain or loss.
 - 5. where an employee or employer is an applicant or agent for the applicant, or has a direct interest in the outcome.

When a conflict of interest exists the Plan Commission member shall do all of the following immediately, upon first knowledge of the case and determining a conflict exists:

1. Declare that a conflict exists and recuse oneself from the portion of the meeting that presents a conflict, including all proceedings, deliberations and voting on the matter.
2. Leave the hearing room or the front table where members of the Commission sit until that agenda item is concluded.
3. The Plan Commission member may represent himself before the Commission for the purposes of providing testimony, but should do so as a member of the public.

- E. Ex Parte Contact. Members of the Plan Commission shall attempt to avoid ex parte contact. As defined here, ex parte contact refers to communication regarding a pending quasi-judicial matter that will come before the Plan Commission. Members of the Plan Commission have a duty to not prejudge a case, and to base their decision only on the materials and facts presented at public meetings and hearings on the matter.

Despite one's best efforts it is sometimes not possible to avoid ex parte contact. If a Plan Commission member receives such communication, the member should immediately inform the contact that they may not discuss the matter while the matter is pending and terminate the conversation. The member should publicly report the content and context of the ex parte contact in full at the public hearing or meeting prior to the Plan Commission making a decision on the issue. The Plan Commission member may continue to participate in the matter, so long as they are of the opinion that their objectivity has not been influenced.

- F. Not Voting On the Same Issue Twice. Members of the Plan Commission shall avoid situations where they are sitting in judgment and voting on a decision in which they had a part in making or previously served as an advocate.

When a member of the Plan Commission is in this situation, the member shall do all of the actions required by Section IV.D. of these Rules of Procedure for cases of conflict of interest immediately, upon first knowledge of the case and determining one's prior involvement.

SECTION V MEETINGS

- A. Meetings shall be held monthly, if needed. The Commission hereby establishes a regular meeting day of _____ (for example, the third Thursday of each month), at _____ (time). Meetings shall be held at _____ (place).
- B. Special Meetings may be called by the Mayor/Village President/Town Board Chair/County Board Chair or upon the written request of _____ (insert number, i.e. 4) members of the Commission to the Chairperson. Notice of special meetings shall be provided to all Commission members and posted at least 24 hours prior to the special meeting.
- C. Open Meetings. Meetings shall be open to the public.
- D. Closed Sessions. The Commission may go into closed session for the purposes enumerated in Section 19.85 of the Wisconsin Statutes.

- E. Quorum shall consist of ____ members (generally, one-half of the members of a body, i.e. 4 members of a 7-member Commission or 3 members of a 5-member Commission). [Describe situations in which a greater number is needed for quorum.]
- F. The Order of Business at meetings shall be substantially as follows:
1. Call to order.
 2. Roll call and declaration of a quorum.
 3. Reading and approval of minutes from the previous meeting.
 4. Communications and reports.
 5. Unfinished business.
 5. Review of Land Divisions.
 6. Review of Rezoning Petitions.
 7. Review of applications for Conditional Use Permits/Special Exceptions.
 8. Referrals from the Governing Body.
 9. New Business.
 10. Miscellaneous.
 11. Adjournment.
- G. Voting. Each regularly appointed Plan Commission member, and alternates that have been authorized to act in the place of a regular member, shall be entitled to one vote on any matter that comes before the Plan Commission.
- H. Minutes of the proceedings shall be kept by the Secretary or a designated recorder, showing the vote of each member upon each question, the reasons for the Commission's determination, and its findings. The minutes shall be immediately filed with the City/Village/Town/County Clerk and shall become a public record.
- I. Parliamentary Procedure. Parliamentary procedure in Commission meetings shall be informal. However, if required to keep order, Commission meetings shall be governed by *Roberts Rules of Order, Newly Revised* for issues not specifically covered by these Rules of Procedure.

SECTION VI HEARINGS

- A. Notice of the time, date, and place of hearings required for petitions for changes and amendments to the comprehensive plan, plan components, zoning ordinance text or map, official map, subdivision ordinance, and applications for conditional use permits/special exceptions or subdivision approval shall be published in the official newspaper or posted, as required by law, and shall be mailed to Commission members, the Zoning Administrator, the applicant, and those parties specified in applicable local ordinances.
- B. Appearances. The applicant may appear in person or be represented by an agent. In the absence of an appearance by the applicant or agent for or against any petition or application, the Commission may table or take action to deny, authorize, or make the recommendation to deny or grant the petition or application.
- C. The Order of Business at hearings shall be substantially as follows:

1. Introduction by the Chairperson.
 2. Explanation by the planning or zoning staff or Chairperson.
 3. Hearing of the applicant or agent.
 4. Report and recommendation by the planning or zoning staff.
 5. Hearing of interested property owners or citizens.
 6. Response of the applicant or agent.
 7. Response of any opposition.
- D. Written Decision. The final disposition of all petitions or applications shall be in the form of a written resolution signed by the Commission Chairperson and Secretary and attached to the minutes. Such resolution shall show the reasons for the Commission's determination and its findings.
- E. Conditions imposed with respect to any conditional use permit/special exception shall be stated in the minutes embodying the Commission's decision and shall also be set forth upon the permit. Such permit shall be valid only as long as the conditions upon which it is granted are observed.
- F. Exhibits. All petitions, letters, photographs, sketches, drawings, documents, study reports or results, architectural and engineering renderings, and any item submitted by any persons, companies, agencies, local officials or staff prior to and/or during public hearings in order to qualify for consideration by the Commission, shall become exhibits for the related matter and shall be numbered, upon receipt, by the Secretary or recorder. Exhibits shall be immediately filed with the City/Village/Town/County Clerk and shall become a public record.

SECTION VII SITE INSPECTIONS

- A. Site Inspections. Site inspections shall be performed by planning and zoning staff. If desired, no more than one member of the Commission may accompany staff on site. A written report of the site inspection shall be orally presented to the Commission, along with accompanying photographs, videos, or other exhibits.

[Alternate section] Site inspections shall be performed by individual members of the Plan Commission. No more than _____ (number less than quorum) members of the Commission shall visit a site at any given time.

[Alternate section] Site inspections shall be performed by the entire Plan Commission. The site inspection must be posted as a public meeting and the public is allowed to come on site.

- B. Authorization for site inspections shall be included as part of the application packet. Failure to authorize inspection of the site may be considered grounds for denying the application.

SECTION VIII PER DIEM AND MILEAGE

Mileage and per diem may be paid to members of the Plan Commission at rates established by the Governing Body for attendance at Plan Commission meetings, hearings, site inspections, and authorized training events, if those members submit a bill for the same. No mileage or per diem will be paid to any member unless authorized and budgeted for by the governing body.

SECTION IX AMENDMENTS

These Rules of Procedure may be amended, suspended, or revoked by a majority vote of the full Commission at any meeting.

SECTION X CONFLICT

Whenever any conflict occurs between these Rules of Procedure and the laws of the State of Wisconsin or local ordinances, the State laws and local ordinances shall prevail.

SECTION XI EFFECTIVE DATE

These Rules of Procedure shall be effective upon adoption by a majority vote of the full Commission and filing with the City/Village/Town/County Clerk.

Signature of Chairperson

Signature of Secretary

Date Adopted _____

Date Filed _____