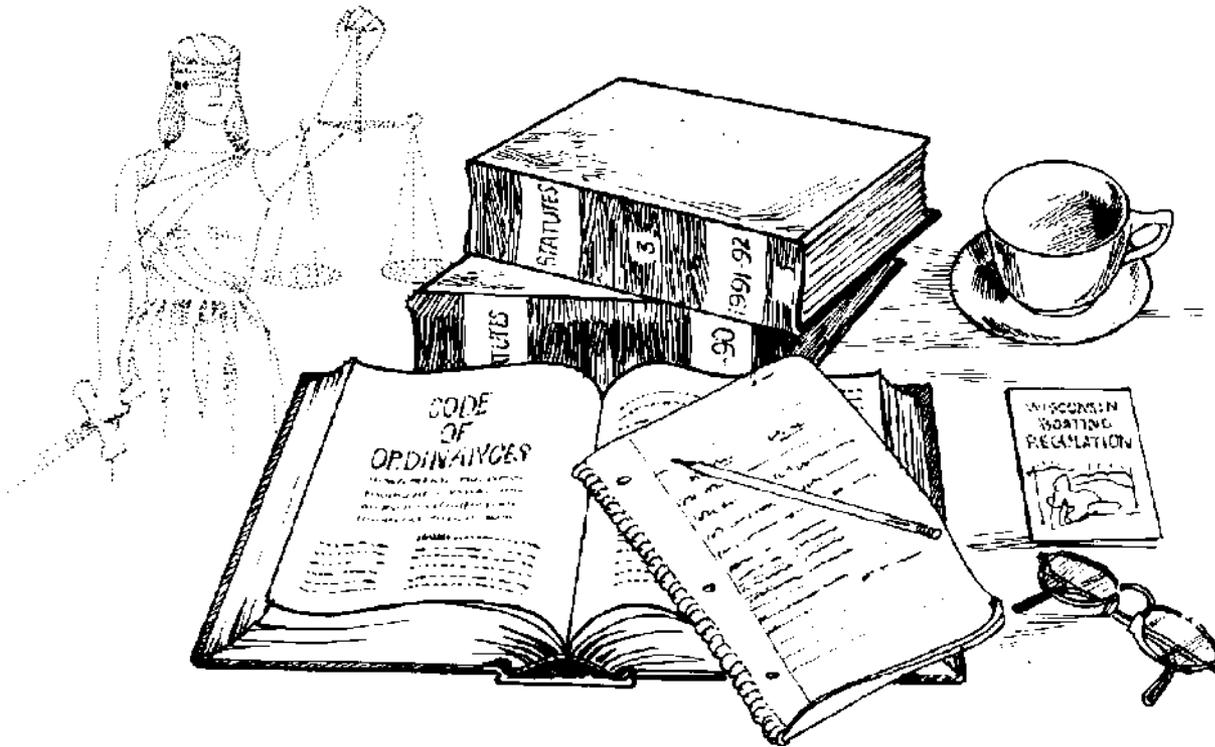


# Procedural Responsibilities



Rebecca Roberts  
Center for Land Use Education  
UW-Stevens Point/Extension



Center for Land Use Education  
College of Natural Resources  
**University of Wisconsin-Stevens Point**



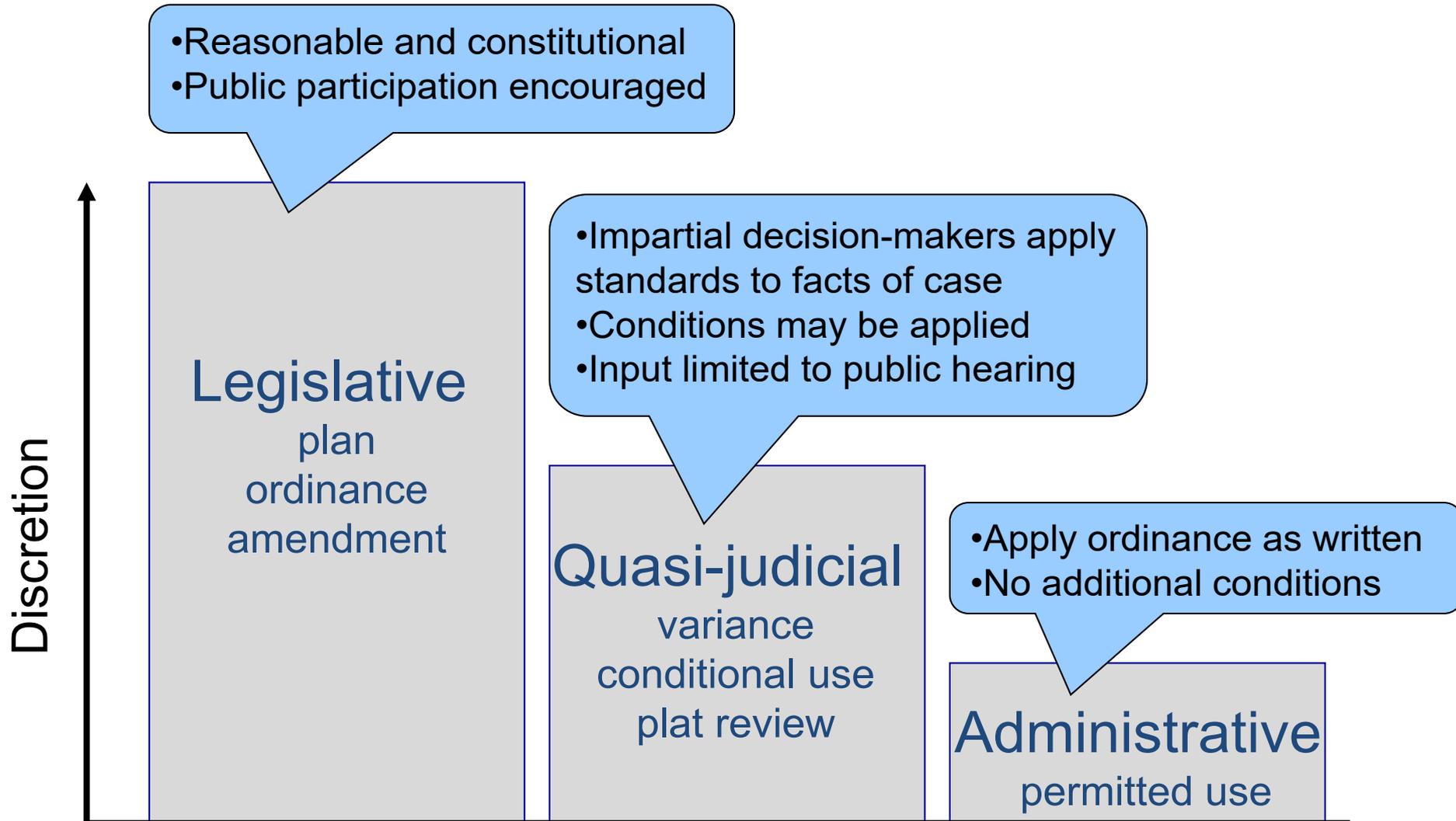
**Extension**  
UNIVERSITY OF WISCONSIN-MADISON

# Procedural Responsibilities

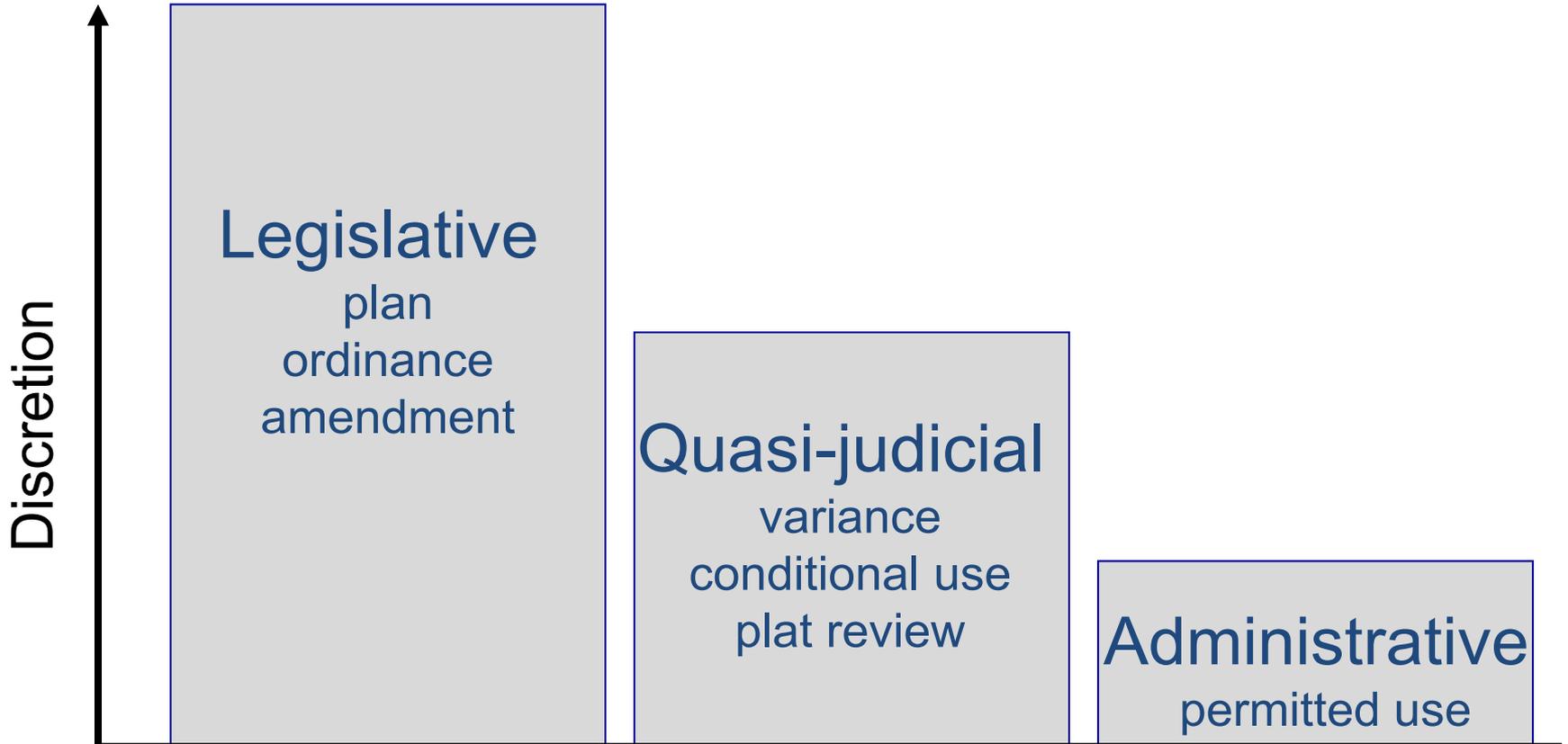
- Open meetings, hearings and site visits
- Fair and impartial decision-making
- Making and recording decisions



# Rules for Decision Making



All local officials must avoid statutory Conflicts of Interest and comply with Wisconsin's Open Meetings Law and Public Notice requirements



# Open Meetings

Wisconsin's Open Meetings Law requires:

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



## WISCONSIN OPEN MEETINGS LAW

A COMPLIANCE GUIDE

DEPARTMENT OF JUSTICE

# Open Meetings



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



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

- Generally, one-half of members. Less than one-half if they can block a decision.

# Open Meetings

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



# Closed Sessions

Closed sessions are limited by statute:

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



# Conduct of Closed Sessions

- Record individual votes to convene in closed session
  - Those who vote against may participate without liability
- Attendance limited to body, parent body, and those essential to closed session (ex. legal counsel)
- Consider only matters for which session is closed
- Motions and decisions must be recorded

# Notice Requirements

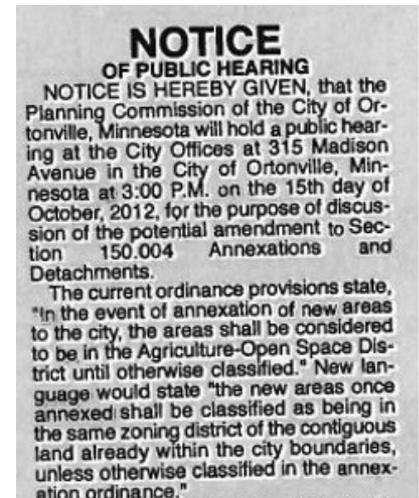


## Public Meeting Notice

- At least 24 hours prior (2 hours for good cause)
- Paid, published notice not required
- Post in 3 locations OR post on government website and 1 physical location (2015 WI Act 79)

## Public Hearing Notice

- 1 newspaper publication at least 30 days prior to comprehensive plan adoption or amendment
- 2 consecutive newspaper publications in 2 weeks prior to ordinance adoption or amendment
- Other decisions as specified by ordinance



# Public Notice

(Wis. Stat. 19.84)

- Time
- Date
- Place
- Subject matter



# Site visits

What are your options??



# Site Visits

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

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

- Can the public go on-site?

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

# Site Visits

- Can decision-makers question the property owner on-site? How about staff?

You can ask technical questions or clarifications. All other questioning and discussion should be saved for the hearing.

- Who can decision-makers talk with during the ride from the site to the meeting?

They can talk to anyone, just not about board/commission issues.

# Public Meeting



- Meeting designed to conduct public business
- Public has a right to attend and observe, not comment (unless specifically allowed)
- Effective means to engage public with the right techniques

# Public Hearing



- Formal proceeding designed to gather public input
- Required when reviewing land use proposals (conditional use, variance) and adopting plans and ordinances



# Sign in Sheet

- Document participation
- Record those who wish to provide testimony
- Distribute materials / report back after meeting

# Introductions

- Describe authority and purpose of meeting
- Establish ground rules
- Review agenda and handouts
  
- Document attendance, quorum, and compliance with open meetings law



# Sample Ground Rules

1. One person speaks at a time after being called on the by the chair or facilitator.
2. Be respectful of each other and each other's viewpoints (even though you may disagree).
3. When opinions are in conflict, focus on interests rather than positions. Focusing on interests helps get to solutions rather than focusing on problems.
4. Treat all members with courtesy and respect.
5. Only comments pertaining to topics on the floor shall be made.



# Meeting Materials

- Provide print or electronic copy of important info to public
- Committee should review before meeting

Materials may include:

- Application materials
- Maps, photos, exhibits
- Ordinance standards
- Staff recommendation
- Decision form

# Property Information



- 0.42 acre site
- Zoned Office Commercial (OC)
- Existing 3,253 sq. ft. structure
- Previous use = Office
- Surrounded by office and institutional type uses.

# Public Comment

- Register and qualify those offering testimony
- Refer back to agenda, time limits, ground rules, and decision standards as needed
- Strong chair/facilitator is key!



# Sample Public Comment Structure

1. Opportunities for public comment at CSC meetings shall be limited to the time on the agenda allotted to them. Deviation from this rule shall be by vote of a majority of those CSC members present at the meeting.
2. Anyone present may speak during the public comment period providing they identify themselves by name and address.
3. Nobody can interfere with or interject comments while another person has the floor.
4. The CSC is interested in hearing all pertinent opinions and evidence, however, the chair may rule on relevancy.
5. The chair may impose a time limit on individual comments.
6. Repetition of comments should be avoided and remarks should be limited to the subject matter being considered.
7. Personal attacks, abusive testimony, or gross hearsay, rumor, or gossip will be ruled out-of-order by the chair.

# Statutory Conflicts of Interest

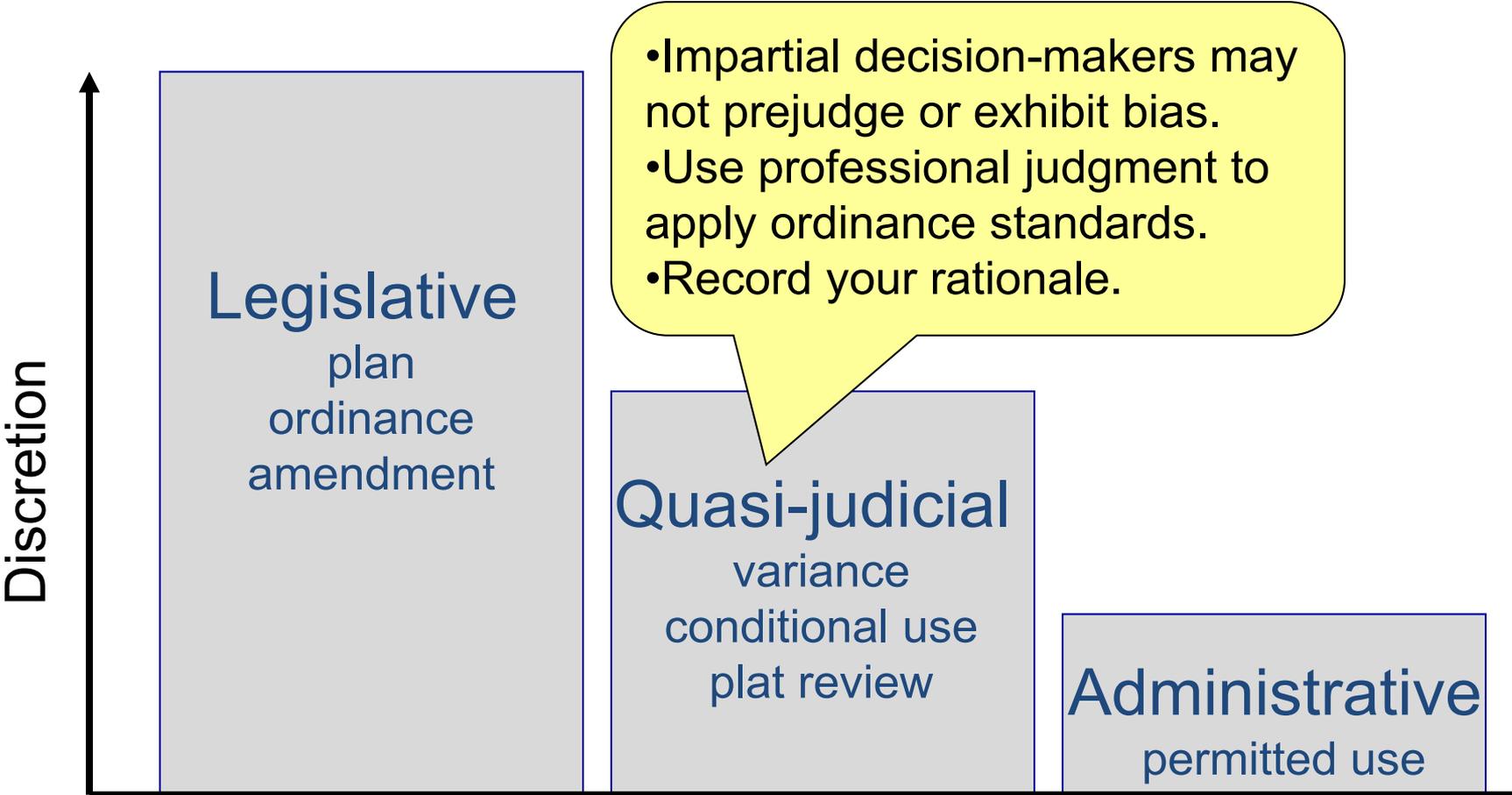
(Wis. Stat. s 19.59 and s. 946.13)



A local official may not use a public position for the private benefit or financial gain of:

- the individual
- immediate family members
- organizations they are associated with

# Quasi-Judicial Decision-Makers



# Bias of Local Officials

Keen v. Dane County,  
2004 WI App 26

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



# Biased??



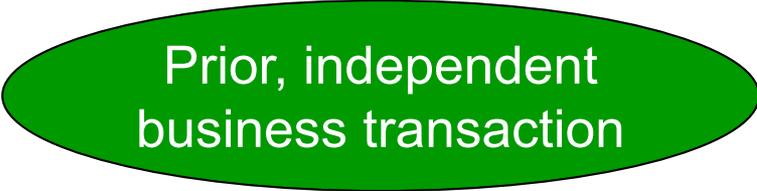
Advocate  
Risk of bias too high

## Decision maker #1

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

## Decision maker #2

- Had leased his land to Payne and Dolan for the operation of a gravel pit.



Prior, independent  
business transaction

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



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

# Recuse yourself from decisions that present a conflict of interest or bias (or appearance of bias)

- Not the same as abstaining (not voting)
- Do not participate in decision or discussion leading up to decision
- Physically separate yourself from the decision-making body if possible
- If you want to provide testimony, do so as a member of the audience



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

Quasi-judicial decision-makers should:

- avoid it,
- disclose it, and
- encourage citizens to make important information part of the public record.



# Recording Decisions

Keen v. Dane County,  
2004 WI App 26

Local ordinance listed 10 factors to consider when deciding a CUP

- ✓ Purpose of zoning district
- ✓ Availability of alternative locations
- ✓ Compatibility with existing or permitted use on adjacent lands...



# Recording Decisions

Keen v. Dane County,  
2004 WI App 26

- After a very lengthy discussion...the CUP was granted with 61 conditions
- But the decision did not refer to the 10 factors in the ordinance
- A record without any reference to the factors in the ordinance is not sufficient



# Recording Decisions

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

- Lamar applied for a variance to raise a billboard above the City's maximum sign height
- BOA denied variance stating that the variance criteria were not met



# Decision-makers must express, on the record:

1. the statutory or ordinance criteria under which the application is decided and
  2. the reasons the criteria are or are not satisfied
- The reasons do not need to appear in a written decision but should appear somewhere in the public record (meeting minutes, transcript, recording, etc.)
  - If appealed, a judge will review the record and needs to be able to follow your reasoning

# Legally Defensible Decisions

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



Authority

Are you empowered by statute or ordinance to act on the matter?



Proper procedures

Did you follow proper procedures?  
(notice, open meeting, public hearing)



Proper standards

Did you apply the proper standards?  
(ordinance, state statute, case law)



Rational basis

Were you unbiased? Could a reasonable person reach the same conclusion?



Evidence

Do facts in the record support your decision?

# Recommended Resources

## Sample guides, checklists and decision forms

### Sample Development Guide

CITY OF JARVIS

#### What is Zoning

Regulating the use of land and buildings in a way that is consistent with the City's Comprehensive Zoning Ordinance. Zoning is a way to regulate the use of land and buildings in a way that is consistent with the City's Comprehensive Zoning Ordinance. Zoning is a way to regulate the use of land and buildings in a way that is consistent with the City's Comprehensive Zoning Ordinance.

To find out what zoning district your site will allow

R1—S

R1D—

R2—L

### Sample Pre-Application Checklist



#### General

- \_\_\_ Y \_\_\_ N

#### §275-24C(2) P

This is a letter

- The proposed
- Activities to
- The frequen
- The total nu
- The estimate
- The number
- Number of v
- The expecte
- The propose

### Department of Community Development

3805 S. Casper Drive  
P.O. Box 510921

### Sample Application Form



City of New Berlin Department of Community Development  
3805 S. Casper Drive, New Berlin, WI 53007  
Phone (262) 797-2445 / Fax (262) 780-4612 / www.newberlin.gov

## Subdivision / Land Division / Developer's Agreement Application

### Applicant / Surveyor / Engineer

(Surveyor or Engineer required for all Subdivision Plats)

RLS/PE Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_

Email \_\_\_\_\_

Project Name / New Company Name (if applicable) \_\_\_\_\_

Representing \_\_\_\_\_

### Property Information

Property Address \_\_\_\_\_

Tax Key Number(s) \_\_\_\_\_

Current Zoning \_\_\_\_\_

Property Owner(s) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Property Owner's Address \_\_\_\_\_

\_\_\_\_\_

Existing Use of Property \_\_\_\_\_

Rebecca Roberts  
Center for Land Use Education  
[www.uwsp.edu/cnr-ap/clue](http://www.uwsp.edu/cnr-ap/clue)  
[rroberts@uwsp.edu](mailto:rroberts@uwsp.edu)  
715-346-4322



Center for Land Use Education  
College of Natural Resources  
**University of Wisconsin - Stevens Point**



**Extension**  
UNIVERSITY OF WISCONSIN-MADISON