

# Chapter 6

## *Ordinance Administration*

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## DEVELOPING THE ORDINANCE

The plan commission plays an important role in the adoption and administration of zoning ordinances, land division ordinances, and other land use related tools. Prior to adoption by the governing body, most land use ordinances and amendments are referred to the plan commission for review and a recommendation. In some cases, the plan commission is involved in drafting ordinance language, reviewing the work of professional consultants or staff, or gathering public input on proposals.

### ► Drafting Ordinance Language

Developing a new ordinance or significant amendment to an ordinance can be a daunting task. Fortunately, there are many model ordinances and examples for Wisconsin communities to reference. The Wisconsin State Law Library maintains a compilation of city, village, town and county ordinances covering a wide range of topics such as zoning, subdivisions, non-metallic mining, shorelands, floodplains, parks, wireless communications and related topics. The website can be accessed at: <http://wilawlibrary.gov/topics/ordinances.php>. Model ordinances for Wisconsin communities are also referenced throughout this handbook. See, for example, the Glossary of Plan Implementation Tools contained in Chapter 5 and the Recommended Resources located at the end of each chapter.

If your community does not have planning or zoning staff or the ability to hire a consultant, the plan commission should try to draft the ordinance language as best as it can, drawing on relevant models and examples. While it can be tempting to take an ordinance from another jurisdiction, make a few minor changes, and forward it for approval, this practice should be avoided. Any language taken from another jurisdiction should be thoroughly reviewed within the context of existing regulations and tailored to fit your community. The following tips are provided for drafting ordinance language:

- **Use simple language with clear meaning.** Avoid legalese and technical jargon. If technical terms are used, make sure they are clearly defined in the definition section of your ordinance. In the absence of such guidance, a reviewing court will look to the plain, dictionary meaning of the word.
- **Select words and punctuation with care.** It's important to consider and clarify meanings conveyed by words and sentences. The placement of a comma or other punctuation, and the use of terms such as *and* and *or* can change the meaning of an ordinance provision. If a word or sentence is confusing, run it by your attorney.
- **Use a direct, active voice.** Avoid ambiguous, passive sentences. For example, replace the following sentence: "A site plan shall be submitted prior to project approval by the board" with "The developer shall submit a site plan for board approval."<sup>1</sup>

### Is Your Ordinance Constitutionally Sound?

When drafting land use regulations, it's also important to be aware of and balance basic rights and protections afforded by the Wisconsin and United States Constitution:

- **First Amendment.** The right to freedom of speech, assembly, and religion.
- **Fifth Amendment.** The right to just compensation for the taking of private property for public use.
- **Tenth Amendment.** The right of government to enact regulations protecting public health, safety, welfare and morals.
- **Fourteenth Amendment.** The right to due process and equal protection under the law if deprived of life, liberty or property.

<sup>1</sup> *Vermont Land Use Planning Implementation Manual*. Topic Paper 16, April 2007. Vermont Land Use Education & Training Collaborative. Available: [www.vpic.info/pubs/implementation](http://www.vpic.info/pubs/implementation).

### Consistency with the Comprehensive Plan

Wisconsin's Comprehensive Planning Law requires land use regulations to be consistent with an adopted comprehensive plan. More precisely, the law states "beginning on January 1, 2010, if a local governmental unit enacts or amends any of the following ordinances, the ordinance shall be consistent with that local governmental unit's comprehensive plan." Ordinances that must be consistent include:

- Official mapping ordinances established or amended under Wis. Stat. § 62.23(6).
- Local subdivision ordinances enacted or amended under Wis. Stat. §§ 236.45 or 236.46.
- County zoning ordinances enacted or amended under Wis. Stat. § 59.69.
- City or village zoning ordinances enacted or amended under Wis. Stat. § 62.23(7).
- Town zoning ordinances enacted or amended under Wis. Stat. §§ 60.61 or 60.62.
- Shoreland or wetland zoning ordinances enacted or amended under Wis. Stat. §§ 59.692, 61.351 or 62.231.

Consistent means "further or does not contradict the objectives, goals, and policies contained in the comprehensive plan."<sup>2</sup> Although the law does not require it, good planning practice suggests that other land use ordinances and actions should also be consistent with the comprehensive plan and other locally adopted plans.

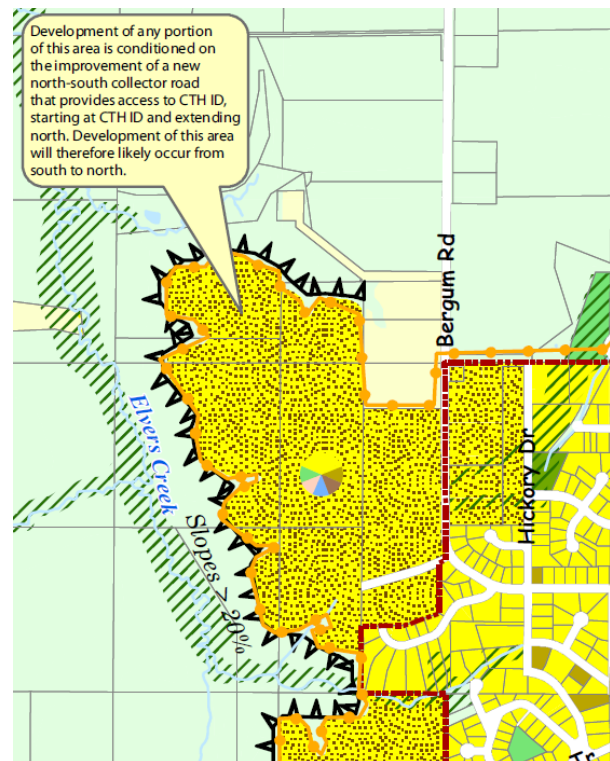
When inconsistencies exist or are proposed, the local government has three options. It may: 1) modify or deny the proposed change, 2) amend the ordinance, or 3) update the comprehensive plan to make it consistent with the ordinance. If a zoning, subdivision or

<sup>2</sup> Wis. Stat. §§ 66.1001(1)(am) and (3). See also: *Exploring the Concept of "Consistency" under Wisconsin's 1999 Comprehensive Planning Law*. 2007. Brian Ohm. UW-Madison. <http://urpl.wisc.edu/people/ohm/consistency%20and%20the%20comp%20plan.pdf>

official mapping ordinance adopted or amended after January 1, 2010 is not consistent with the comprehensive plan, the ordinance may be subject to a legal challenge.

The map below and table on the next page illustrate how a comprehensive plan can be used to guide future development in light of the consistency requirement. The map shows how the text of the comprehensive plan can be used to explain timing and phasing issues not readily depicted on the future land use map. The table identifies zoning districts that are consistent with the future land use categories recommended in the comprehensive plan.

The Village of Mount Horeb Future Land Use Map includes a text annotation stating that development on the northwest side of the village is conditioned on the improvement of a new north-south collector road. This type of guidance can be used to inform future zoning amendments and maintain consistency between the comprehensive plan and local land use ordinances.



Graphic from Village of Mt. Horeb Comprehensive Plan, 2009, Map 4b: Future Land Use. [www.mounthorebwi.info](http://www.mounthorebwi.info)

*Consistency Matrix*

The Village of DeForest Comprehensive Plan identifies recommended zoning districts for each future land use category. When reviewing a potential zoning amendment, the city can quickly determine if the proposed zone is consistent, potentially consistent, or not consistent with the use identified in the plan.

<b>Legend</b>											
<input checked="" type="checkbox"/> consistent											
<input checked="" type="checkbox"/> potentially consistent											
<input type="checkbox"/> not consistent											
<b>Zoning Districts / Future Land Use Map Categories</b>	Single Family Residential Sewered	Two-Family Residential	Mixed Residential	Planned Neighborhood	Mixed Use Centers	Downtown	Planned Commercial	Planned Office/Research	Planned Industrial/Business Park	Open Space/Environmental Corridor	Agricultural Preservation Areas
<b>Residential Districts</b>											
RH: Rural Housing											✓
R-1: Single Family Residential	x										
R-2: Two Family Residential		x	✓								
R-3: Multi-Family Residential			x								
<b>Business Districts</b>											
B-1 Central Business						x					
B-2 General Business							x				
B-3 Highway Business							x				
AB: Agricultural Business											✓
<b>Industrial Districts</b>											
M-1: Restricted Industrial									x		
M-2: General Industrial									x		
M-3: Intensive Industrial											
<b>Agricultural/Natural Resources Districts</b>											
A-1: Exclusive Agricultural											x
A-2: General Agricultural											✓
C-1: Conservancy District										x	
Floodplain, Shoreland, Wetland Overlay										x	
<b>Other</b>											
PUD: Planned Unit Development		x	✓	x	x	✓		✓			
Utilize a mix of districts				✓	✓						
Create a new district					✓			x			

Graphic derived from Village of DeForest Comprehensive Plan, 2006. [www.vandewalle.com/work/wipdeforest.html](http://www.vandewalle.com/work/wipdeforest.html).

## ADMINISTERING THE ORDINANCE

Administering a code of ordinances can be time-consuming and expensive. Resources are needed to draft and revise the ordinance, respond to applicant questions, issue permits, and investigate and enforce violations. While most of these tasks are performed by staff, plan commission members and applicants also benefit from a clear understanding of the development review process.

### ► Navigating the Development Review Process

Typically an applicant seeking a development permit will first contact the planning and zoning department to explain their plans and to obtain the necessary application materials. These materials should clearly describe the application process, submittal requirements and decision-making criteria. Many jurisdictions supply an example site plan and sample petition as part of the application packet. Staff can help to explain the application materials, the rationale behind the regulations, and any other applicable deadlines or requirements. In small communities, this function can be performed by a knowledgeable clerk, chairperson or administrator.

Once submitted, staff should review the application to identify missing or problematic information. The process should not proceed until the permit application and all related maps and plans are complete and accurate. Other specialists, such as engineers or natural resource specialists may be asked to assist in reviewing issues such as erosion control, stormwater management, delineation of ordinary high water marks, floodplains and wetlands, and restoration issues.

After an application is deemed complete, staff should schedule a public hearing on the matter

and send out the required public notice.<sup>3</sup> Most communities mail a copy of the application packet to the plan commission prior to the scheduled meeting or hearing. Some communities include a staff report which provides additional background information on the proposal and may include staff recommendations. Plan commission members should review the packet in advance to familiarize themselves with the proposal and to better prepare themselves for discussion

### Staff Reports

Staff reports provide the plan commission with critical information regarding relevant plans, ordinances, restrictions and site conditions on the property and neighboring properties. The plan commission and staff should decide together if it is appropriate to prepare staff reports and what they should include. Common components include:

- A summary of the applicant's request.
- History of the site, including previous permits requested and granted.
- Relevant statements from the comprehensive plan and other community plans.
- Salient purpose statements and provisions from local ordinances.
- Relevant statutes and case law.
- Information from the site visit.
- Discussion of whether the proposal meets the standards.
- Staff recommendation to approve or deny the request and conditions that should be attached.

### Sample Application Materials

Chapters 7 and 8 contain a sample development guide, pre-application checklist, application forms, and staff reports. Sample site plan and submittal requirements are provided on the next two pages.

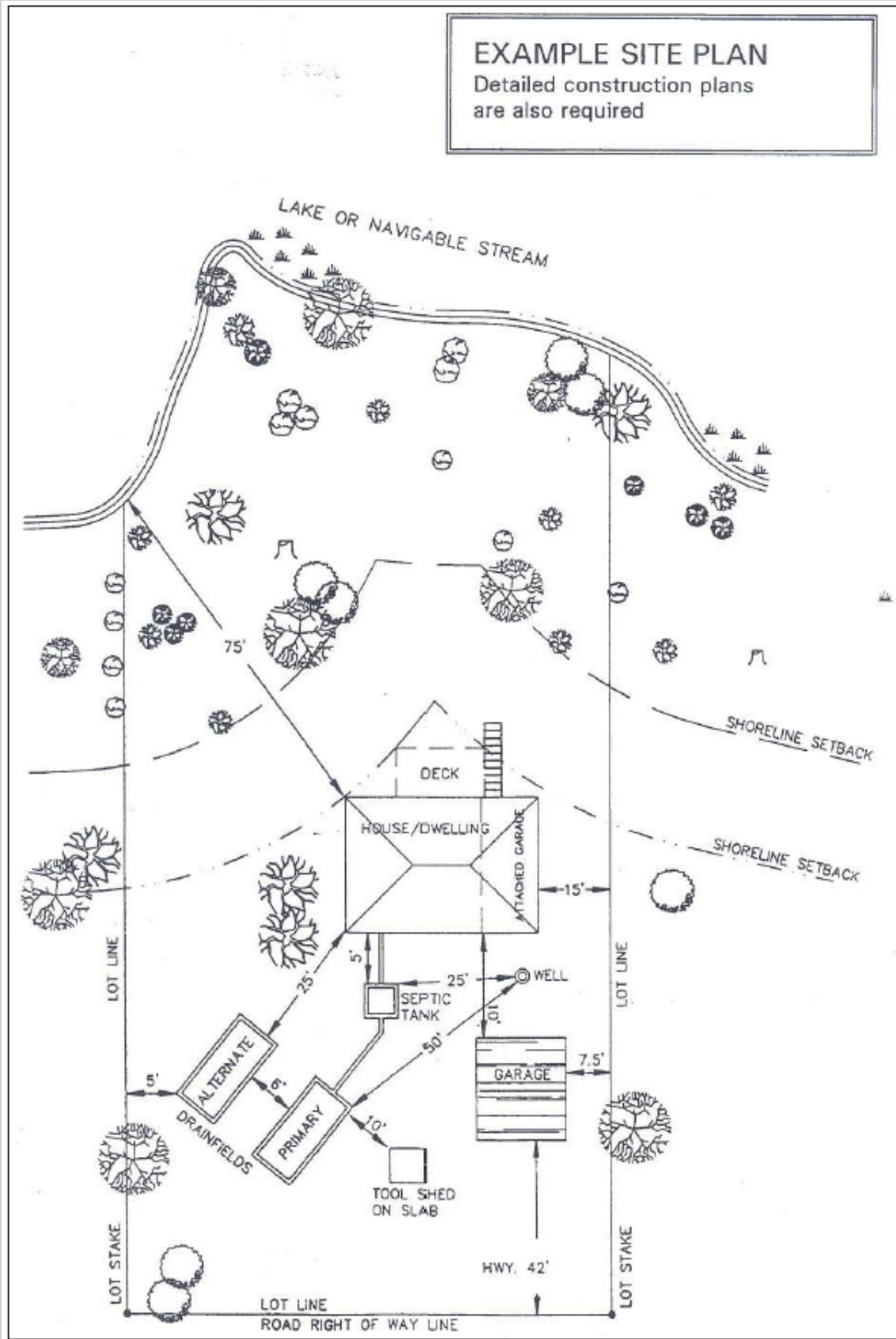
planning), 7 (zoning), and 8 (subdivision regulations).

and decision-making.

*Sample Submittal Requirements*

Following is a sample list of materials that must be submitted with an application. Compare it to your current application standards and add, modify, or delete as appropriate based on local development standards and the type of permit being issued.

- A. Name and contact information for owner and agent and legal description of the property.
- B. A written description of and justification for the proposed permit, including the petitioner's evaluation of the request against the standards contained in the comprehensive plan and local ordinances.
- C. A specified number of copies of site plans, accurately drawn to a scale of not less than one inch to \_\_\_ feet, showing and labeling:
  - a. Landowner's name, property address and legal description.
  - b. Preparer, date of preparation and revisions.
  - c. Scale and directional arrow.
  - d. Vicinity map showing wetlands, floodplains, surface waters, roads, buildings, utilities and other natural or man-made features within \_\_\_ feet of property.
  - e. Site plan showing property lines, dimensions and distances between site features.
  - f. Location and dimensions of existing and proposed structures.
  - g. Colors, materials and architectural details of buildings.
  - h. Location, size and screening of outdoor storage, dumpsters and mechanical equipment.
  - i. Location of existing and proposed public streets, rights-of-way, easements and other reservations of land.
  - j. Auto ingress and egress, and visual clearance triangles.
  - k. Locations, dimensions and surfacing for existing and proposed parking, loading and walkway areas.
  - l. Existing and proposed topographic contours shown at \_\_\_ foot intervals.
  - m. Soil map and key.
  - n. Location, species and mature size of existing and proposed landscaping.
  - o. Location, height, dimensions, material and color of exterior signage.
  - p. Location, height, type, orientation and power of exterior lighting.
  - q. Location of existing and proposed private well and onsite waste treatment systems, or connections to public sanitary sewer, water and/or storm drainage.
  - r. Location of existing and proposed utilities including electricity, natural gas and telecommunication lines.
  - s. Proposed grading and drainage control plan.
  - t. Proposed erosion control and stormwater management plan.
- D. Names and addresses of the owners of all lands within \_\_\_ feet of the property as they appear on the current records of the Register of Deeds, to be used to provide notice of the hearing.
- E. Other pertinent information as requested by the zoning administrator to determine if the proposal complies with the ordinance.
- F. The required review fee.



Example site plan provided by Langlade County, WI.



### ► Conducting a Site Visit

Many local officials conduct a site visit prior to making decisions on proposed rezonings, conditional uses, subdivision plats, and other development decisions. A site visit can be used to verify the accuracy of information submitted as part of an application and to gain a hands-on understanding of the site and its context. Using a combination of field notes, photographs and video recordings, local officials record the characteristics of the site and surrounding properties, including topography, vegetation, surface water, drainage, streets, buildings, utilities, parking and circulation patterns. This information can be used to identify potential conflicts between the proposed development and neighboring uses and to identify limitations of the site that may require additional analyses or mitigation.

Plan commission members have several options for conducting site visits. If plan commission members visit the site as a group, they must comply with the requirements of Wisconsin's open meetings law, including providing advance notice of the meeting and allowing the public to access the site.<sup>4</sup> To avoid these requirements, some communities require plan commission members to visit the site individually. Others restrict site visits to planning and zoning staff. If a site visit is performed by staff, the staff should take photographs or a video recording of the site and prepare a detailed staff report to share with the plan commission.

Before anyone may physically access a property for a site inspection, permission must be obtained in writing from the landowner. Most communities include a signature line on the application granting this authority. For example, one community provides: "By the execution of this application, the applicant

<sup>4</sup> The purpose of a site visit is to gather information related to making a decision of a governmental body, therefore, both the numbers and purpose test of the open meetings law are met. For additional information, please refer to Chapter 2.

hereby authorizes the City or its agent to enter upon the property during the hours of 7:00 A.M. to 7:00 P.M. daily for the purposes of inspection. This authorization applies even if the applicant has posted the land against trespassing pursuant to Wis. Stat. § 943.13."

Plan commission members conduct site visits to gain a better understanding of the physical limitations of properties and their neighboring uses.



Photo by Robert Korth, UW-Extension Lakes.

### Recommended Equipment

The following equipment is recommended for conducting a site visit:

- Base maps and aerial photos of the site and surrounding area.
- A notepad and clipboard for taking field notes.
- A still camera or video recorder.
- A measuring device (preferably on wheels).
- Appropriate clothing, including boots, construction hat and durable outerwear.
- Identification as a member of the plan commission or planning and zoning staff.

Meck, Stuart. "Site Visits: Purpose, Planning and Practice." *Zoning Practice*, Issue 2, February 2005. American Planning Association.

**D Making and Recording Decisions**

During the public hearing the plan commission has an opportunity to review the application materials, ask questions of the applicant, and gather public input regarding the proposal. Answers to all questions about a proposal should be recorded in the official record on the matter. When making a decision, the plan commission should consider all of the evidence in the record, including the application, evidence gathered on-site and during the public hearing, staff reports, photos, sketches, letters, emails, and audio and video tapes. The plan commission must determine the credibility of each piece of evidence and decide whether the applicant has shown that they meet all of the legal standards necessary to grant the request.<sup>5</sup>

A sample decision form is provided at the end of this chapter to help the plan commission record relevant findings of fact, conclusions of law, and their determination:

1. **Findings of Fact.** Findings set out the relevant facts from the evidence presented. Findings should identify the applicant, the specific relief requested, and the properties affected by the proposal. A list of witnesses, documents and exhibits relied upon in making the decision should be preserved and referenced in the findings.
2. **Conclusions of Law.** Conclusions describe, fact by fact, how each legal standard was or was not met based on the evidence presented. Depending on the type of decision being made, standards might include “public safety,” “adequate public facilities,” or “consistency with the comprehensive plan.” Standards specific

to each type of decision are found in local ordinances, state statutes and case law and are described in related sections of this handbook. If no evidence was presented to meet a standard, or if evidence was rejected because it was believed to be unreliable or unbelievable, those facts should be stated on the record.

3. **Determination.** The recommendation or final decision on a matter states whether the request was granted or denied and specifies applicable time limits, conditions and other limitations. A written decision supplied to the applicant should include a notice of appeal rights.

The plan commission may not grant or deny an application by simply restating the statutory or ordinance language that was or was not met.<sup>6</sup> Instead, the commission must explain the “grounds” it relied upon to make its decision. It must cite the specific evidence and reasons why the application does or does not meet each legal standard.<sup>7</sup>

It’s not sufficient to say “Based on the evidence, the plan commission recommends denial of the rezoning because it is not consistent with the comprehensive plan.” Rather, the plan commission should provide specific justification. For example, “Although the requested use is consistent with the residential designation shown on the future land use map, the comprehensive plan states that development of this area is contingent on improvement of a new north-south collector road. Road improvements have not been made and are not budgeted for in the 5-year capital improvement plan. Therefore, the plan commission recommends denial of the rezoning.” The map on page 3 provides a graphic illustration of this scenario.

<sup>5</sup> The applicant has the burden of proof of establishing the need for a permit. The plan commission cannot guess or fill in the blanks on an incomplete application. If an application is deemed incomplete or if significant changes to the original request are desired, the plan commission may require the applicant to submit a new application and permit review fee.

<sup>6</sup> *Lamar Central Outdoor, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87

<sup>7</sup> *Keen v. Dane County Bd. of Supervisors*, 2004 WI App 26, 269 Wis. 2d 488, 676 N.W.2d 154.

**Drafting Land Use Findings**

The following tips are provided to help the plan commission draft legally defensible land use findings.

1. Put your findings in clear and understandable language.
2. Use statutory, case law and local ordinance standards as guidelines for your findings.
3. Avoid findings that merely restate the law. Instead, describe how the evidence supports or does not support each standard.
4. Make sure all evidence, including on-site observations, is included in the record.
5. Articulate a clear logical link between the impacts of the project and conditions imposed upon it.
6. If a project has been modified since findings for it were written, make sure that the modifications do not necessitate new or revised findings.

Adapted from Kovacic, Gary A. and Mary L. McMaster. "Drafting Land Use Findings," *Planning Commissioners Journal*, Issue 4, May/June 1992.

Findings are important to help the public understand why the commission reached the decision it did. Even if members of the public disagree with a commission decision, they may not become as upset or angry if they understand the reasoning that led to the decision. If the plan commission does not announce the reasons for its decision, it reflects poorly on the commission and could jeopardize the decision.

If a plan commission decision is appealed, a reviewing court will look at the entire record and must be able to follow the commission's reasons for making the decision. While the reasons do not need to be included in a written decision, they must be found somewhere in the record, such as the transcript of the proceedings. Even if the court would not have

reached the same conclusion, it is likely to uphold the decision if it finds that a reasonable person could have reached the same conclusion based on evidence in the record.<sup>8</sup>

The following suggestions are provided to strengthen plan commission decision-making:

- Revise application and decision forms to prompt the applicant and decision-makers to describe how the request meets the appropriate legal standards.
- Consider requiring the applicant to draft sample findings of fact as part of the application process.
- Require applications to be complete and available to the plan commission well in advance of the public hearing. This provides time for the commission to read, digest and explore the information in the application prior to the hearing.
- Distribute a checklist or decision form to each plan commission member so that they can record how the request meets each legal standard.
- Ask the applicant to address each legal standard during the public hearing.
- Provide time for local decision-makers, staff and the public to ask questions of the applicant and present additional information.
- Provide an opportunity for the applicant to respond to information presented.
- Discuss each member's findings before voting on the issue. Remember, an individual may change his/her vote on an issue after each member articulates their findings.
- Prepare a summary of the decision, including the relevant reasons for granting or denying the permit. It's OK to direct staff to prepare a written decision, but don't make them guess at what you were thinking. State for the record what your reasons are for making the decision.

<sup>8</sup> Additional information on appealing plan commission decisions, including the certiorari review criteria commonly used by courts is provided in Chapter 7.



## **PLAN COMMISSION DECISION FORMS**

The forms at the end of this chapter can be used by plan commissions involved in making land use decisions or recommendations. These forms can also be downloaded in Word format from the Center for Land Use Education website: [www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx](http://www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx)



### **Plan Commission Decision Forms**

Decision criteria are provided for common plan commission decisions including plat approval, conditional use permits, zoning amendments and comprehensive plan amendments.