

Zoning Fundamentals

April 29, 2021
10-11 am

Lynn Markham & Rebecca Roberts



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



Extension
UNIVERSITY OF WISCONSIN-MADISON

Outline

1. History and purposes of zoning
2. Sorting land uses
3. How does zoning work?
4. Relief mechanisms
5. Nonconformities
6. Appeals
7. Newer approaches to zoning

Poll 1

How many people are watching the webinar at your site?

- 1
- 2
- 3
- 4
- 5
- More than 5

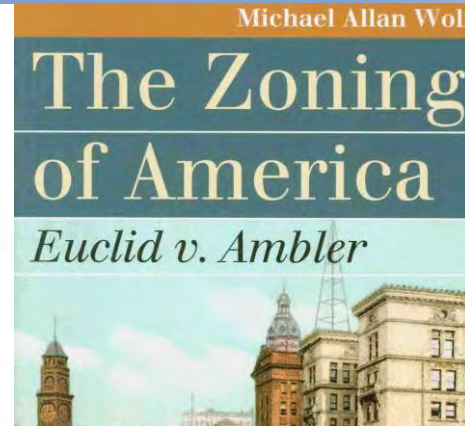
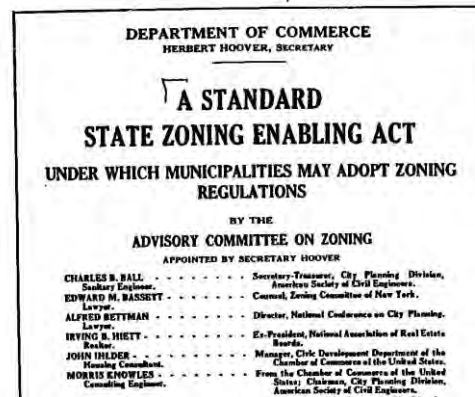
Poll 2

What is your role related to zoning? Choose all that apply.

- zoning committee/plan commission
- zoning board of adjustments/appeals
- zoning staff
- governing body (e.g. county board)
- other

History and purposes of zoning

Key Zoning Dates in the U.S.



1916 – New York City adopts first zoning ordinance to separate incompatible uses (residential, industrial)

1924 – Standard State Zoning Enabling Act

1926 – U.S. Supreme Court upheld zoning as a valid exercise of the police power

- Landowners not entirely free to create nuisances to those around them
- Local governments may police conduct in the name of public health, safety and welfare

1927 – Standard City Planning Enabling Act

- Zoning regulations to be made “in accordance with” a comprehensive plan

Guiding Document



Comprehensive Plan

Regulatory Tools to Implement the Plan



Zoning Ordinance



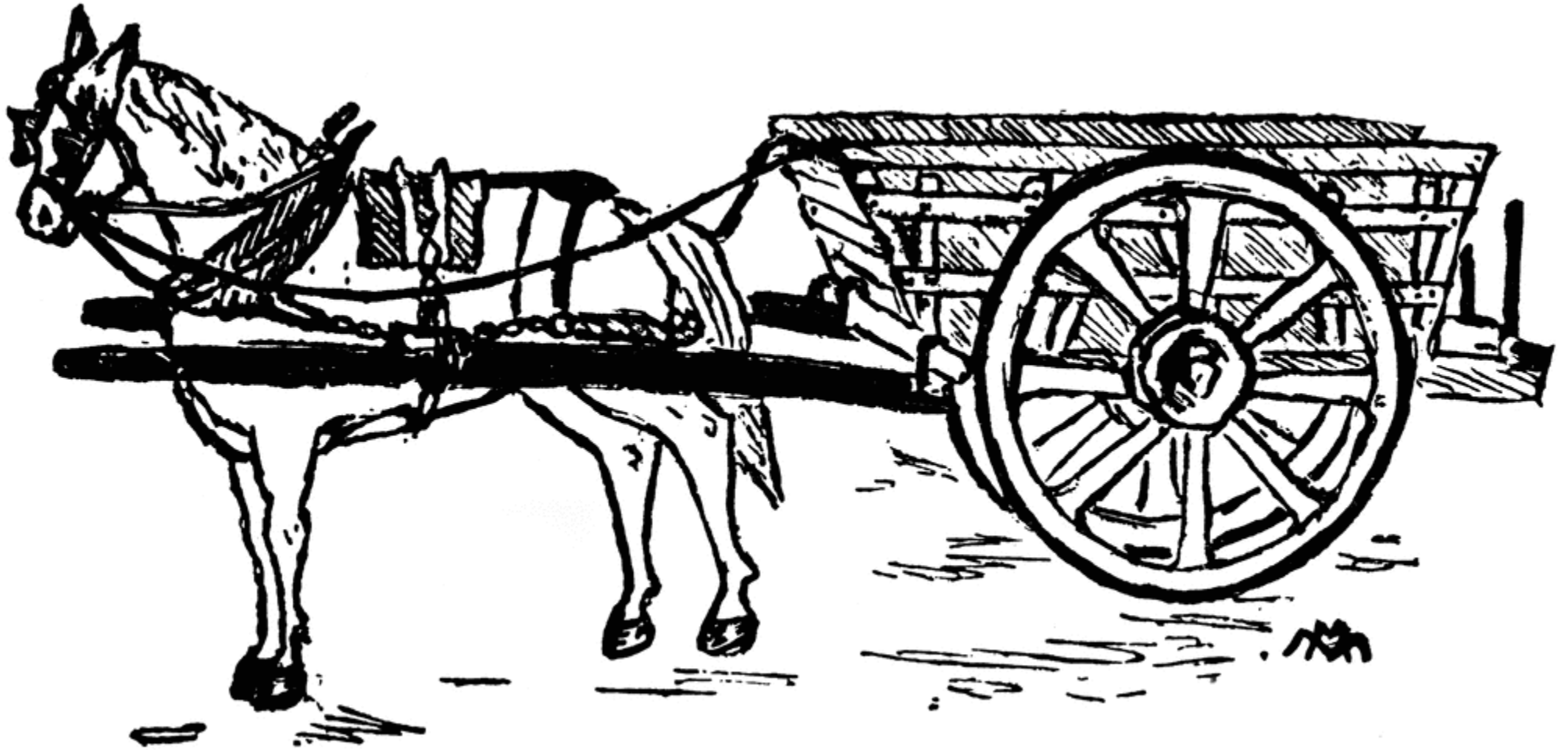
Subdivision Ordinance



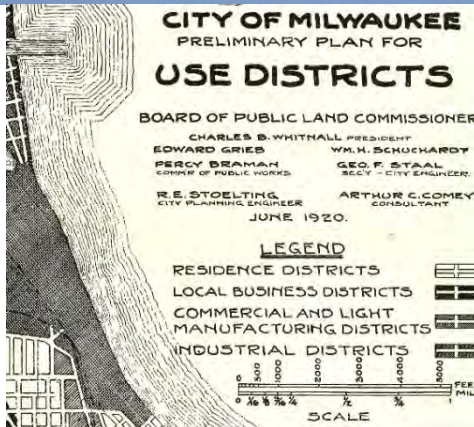
Official Map

Comprehensive plan = goals

Zoning = way to achieve goals



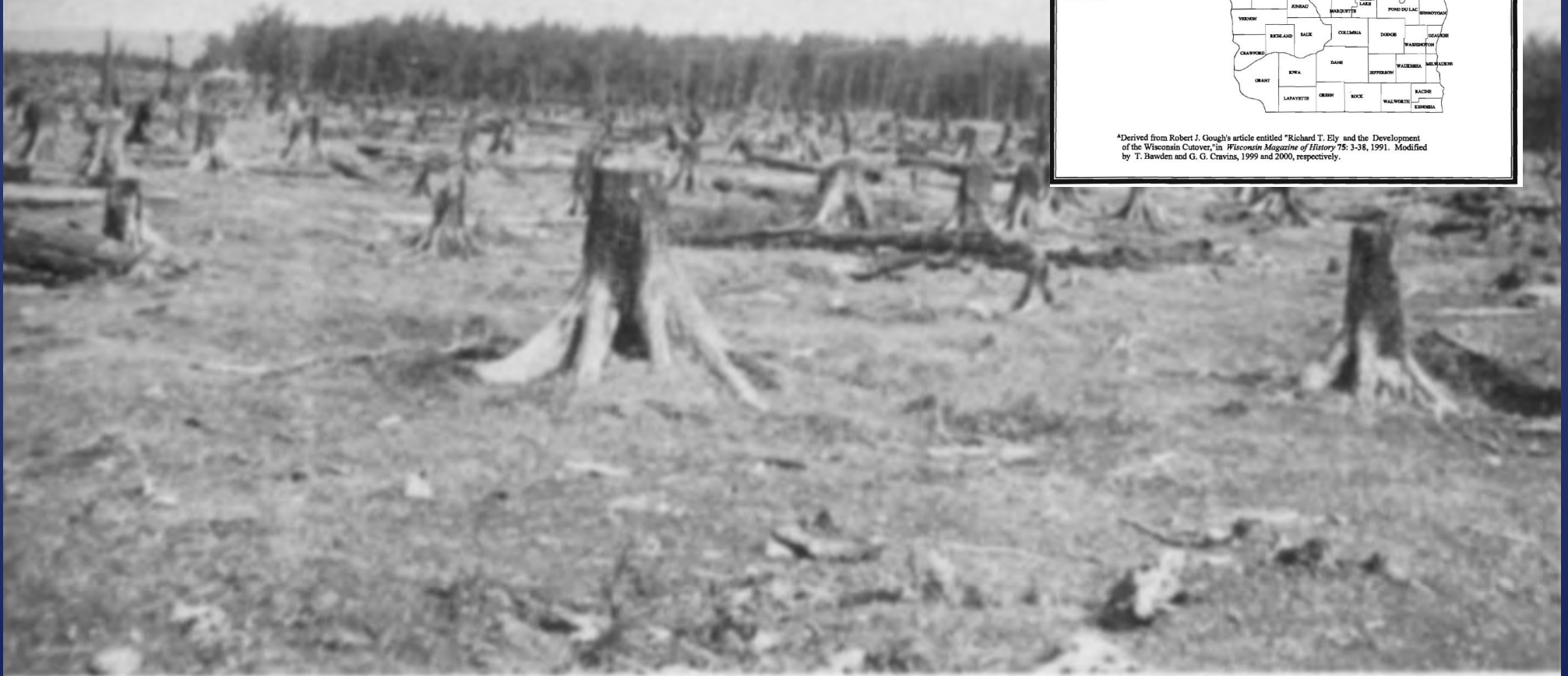
Key Dates in Wisconsin



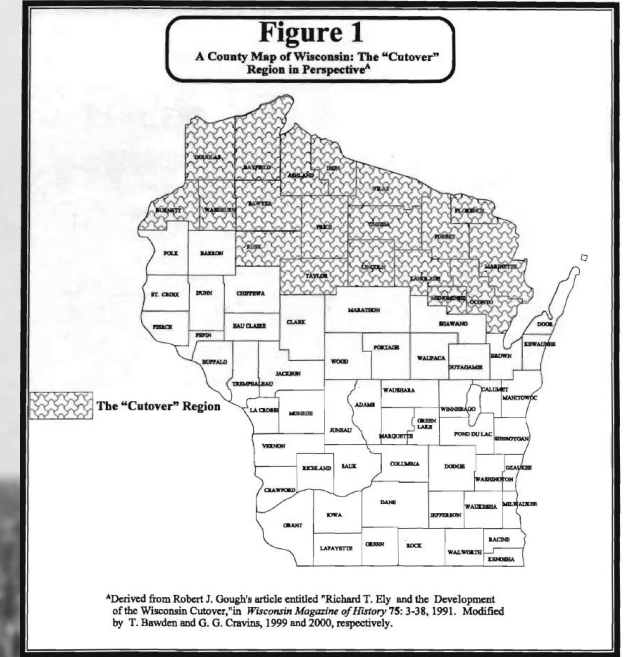
1920 – First
Wisconsin zoning
ordinance created
by City of Milwaukee

1923 – Zoning
upheld by Wisconsin
Supreme Court

History of Rural Zoning in Wisconsin



"Timber living and dead, inextricably intermingled . . ."



Prize Winning Cabbage
Burnett County, 1895







4467

V6822

45-09801-45



45-09801-45



Abandoned.

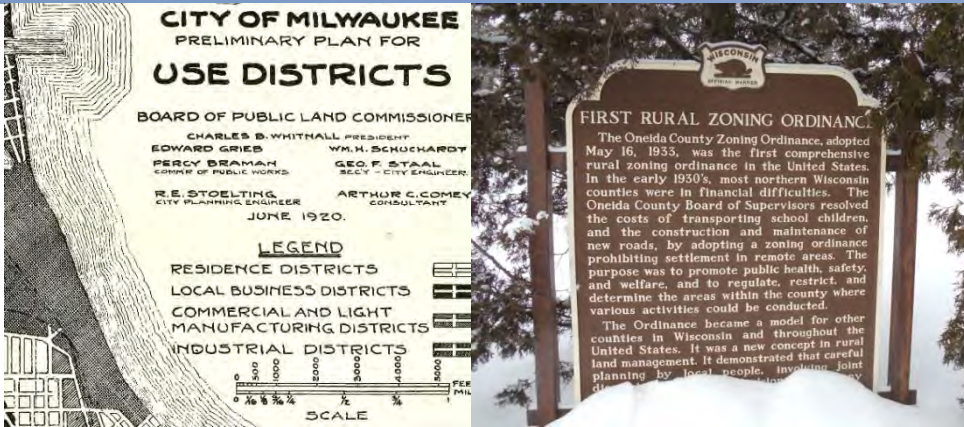
Courtesy W. A. Rowlands

1931 – WI Attorney General provided his opinion on the constitutionality of county zoning...

“The county zoning statute is undoubtedly in the public welfare. The cut-over areas of northern Wisconsin speak as eloquently against haphazard development as any city condition...”

“The spotting of these lands with remote or abandoned farms, resulting in sparsely settled districts with insufficient population or value to support roads and schools...the misdirected efforts to farm lands not well-suited to agriculture with resulting personal grief and social loss...all cry out for planning, for social direction of individual effort.”

Key Dates in Wisconsin



1920 – First
Wisconsin zoning
ordinance created
by City of Milwaukee

1923 – Zoning
upheld by Wisconsin
Supreme Court

1929 – Wisconsin
Legislature authorized
zoning to regulate
uses in rural areas –
three zones
farming, forestry,
recreation

1933 – Oneida
County adopted first
comprehensive rural
zoning ordinance in
the United States

Key Takeaways

- General zoning was born out of need to:
 - Isolate incompatible uses in urban areas
 - Limit far flung, fiscally untenable development in rural areas
- Purpose to protect health, safety and welfare
- Widely adopted by American communities
- Continues to evolve to meet changing needs
- Innovation and control through local ordinances, state statutes, and court cases

Sorting land uses

The Challenge

- The sorting exercise is intended to engage participants in practicing and gaining experience in the kinds of discussions and skills necessary for successfully grappling with the perennial tension between private property rights on the one hand and community values and interests on the other

SHEET #1 PRIVATE PROPERTY

What's OK and what's not?

Always OK

or

Don't Need Our Input

It Depends

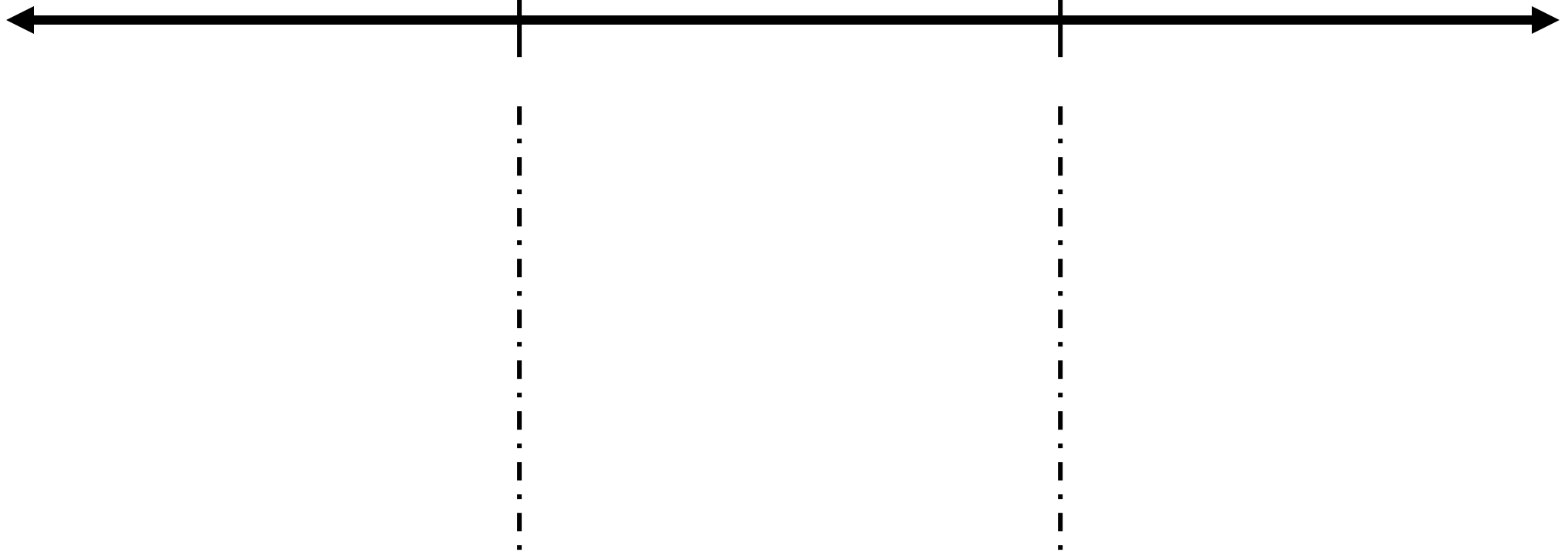
or

**Needs Community/Town
Gov. Input**

Never OK

or

Hey! No means "No"



Land Uses List

- High level nuclear waste storage
- Maximum security prison
- Municipal landfill
- Racetrack for stockcars
- Back yard go-cart track for kids
- Large scale casino gaming facility
- Child's (5' diameter) wading pool
- "Adult" Entertainment facility
- Cottage industry making small wooden souvenirs
- Restaurant supper club
- Gravel pit
- Clear-cutting timber
- Selective cutting timber
- Re-channeling streams
- Residential subdivision
- Large-scale livestock containment facility
- Expansion of existing livestock-based agricultural operation
- Commercial game farm
- Shooting range
- Music festival/concert site
- Back yard wedding reception with an electric band
- Man-made pond
- Tavern
- Solid/Hazardous Waste Incinerator
- Single mobile home on residential lot
- Selling one residential lot from an Ag '40'
- Space Alien landing site
- Papermill
- Sawmill
- Military practice bombing range
- Private practice bombing range
- Heavy industry/manufacturing
- Light industry/manufacturing
- Large scale livestock processing facility
- Man-made lake
- Nudist camp
- Bible camp
- Fishing camp
- Nude fishing camp
- Auto salvage yard

1) Choose one set of 5 land uses

2) Identify each land use as:

- Always OK
- It depends
- Never OK

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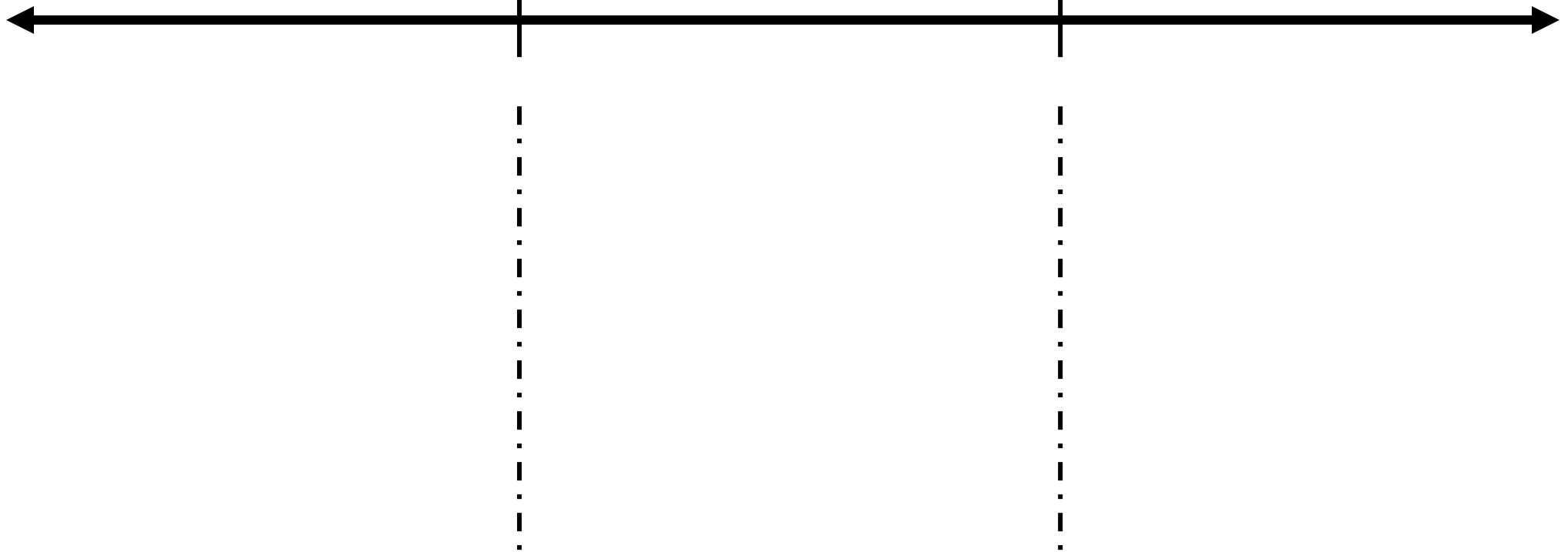
or

**Needs Community/Town
Gov. Input**

Never OK

or

Hey! No means "No"



Poll 3

What are the main reasons your community has general zoning? Choose all that apply.

- public health
- safety
- welfare
- avoid land use conflicts
- group compatible uses together
- aesthetics
- protect public and private investments
- other (type in chat)

Zoning

Counties

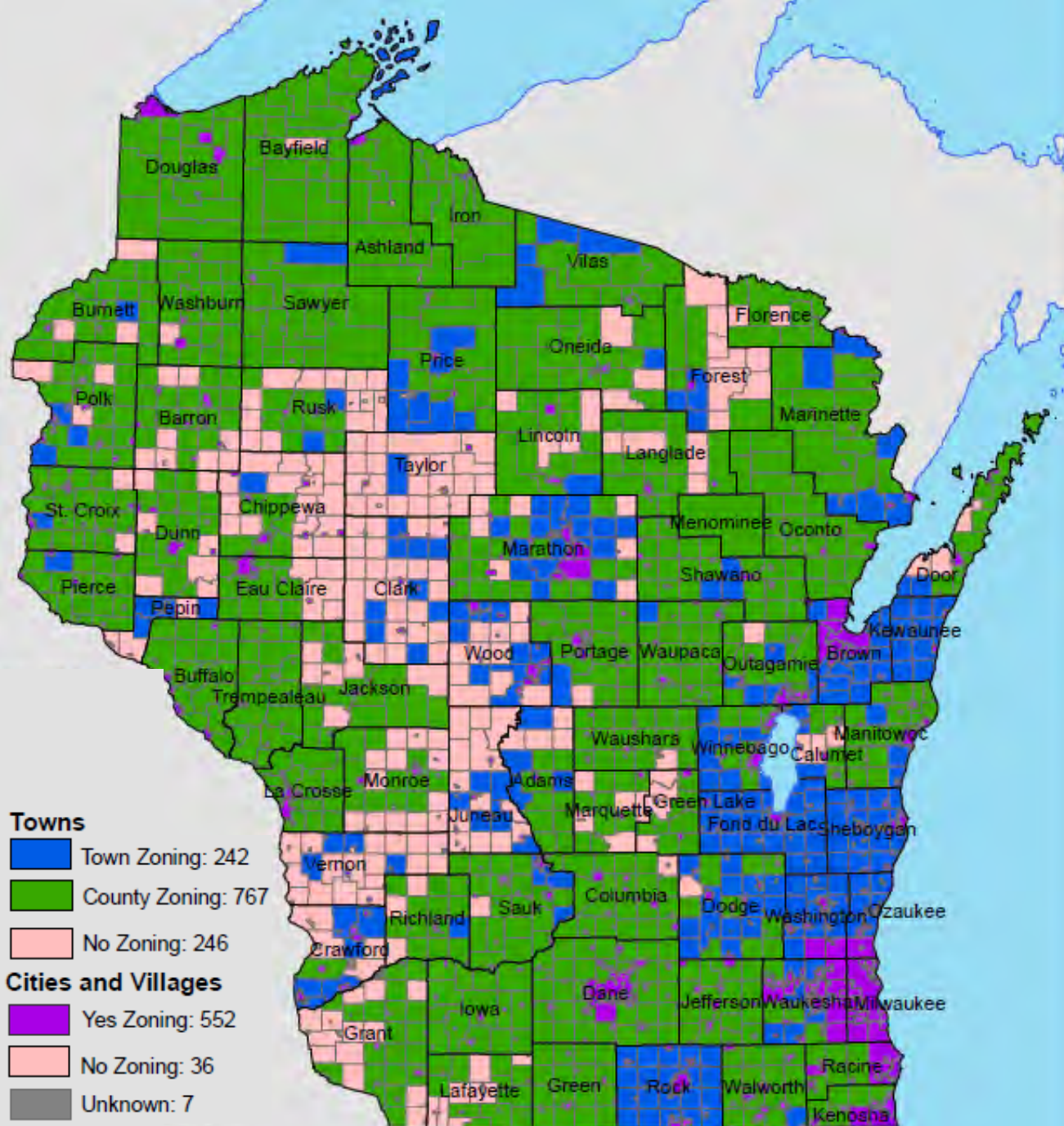
- May adopt general zoning in unincorporated areas
- Required to administer shoreland/wetland zoning

Towns

- May adopt general zoning (if no county zoning or with county approval following adoption of village powers)

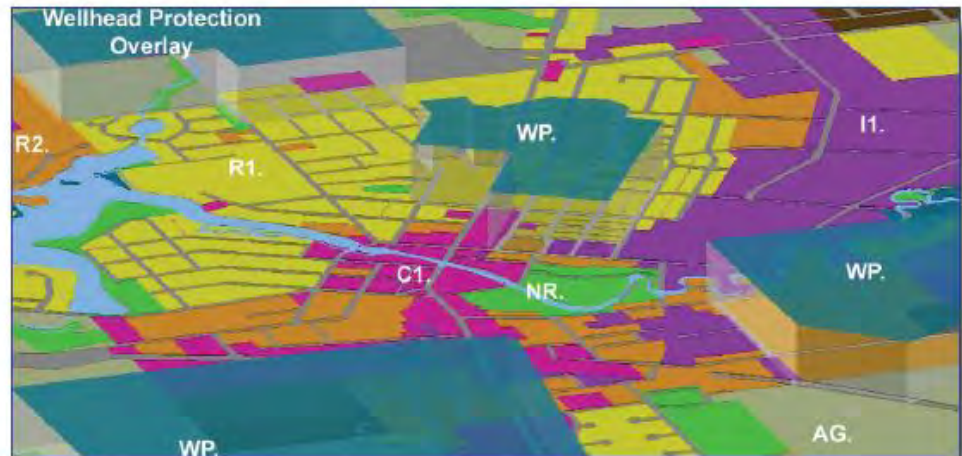
Cities/Villages

- May adopt general zoning
- May adopt extra-territorial zoning extending 1.5-3 miles beyond boundaries
- May have shoreland or floodplain zoning - required in some circumstances

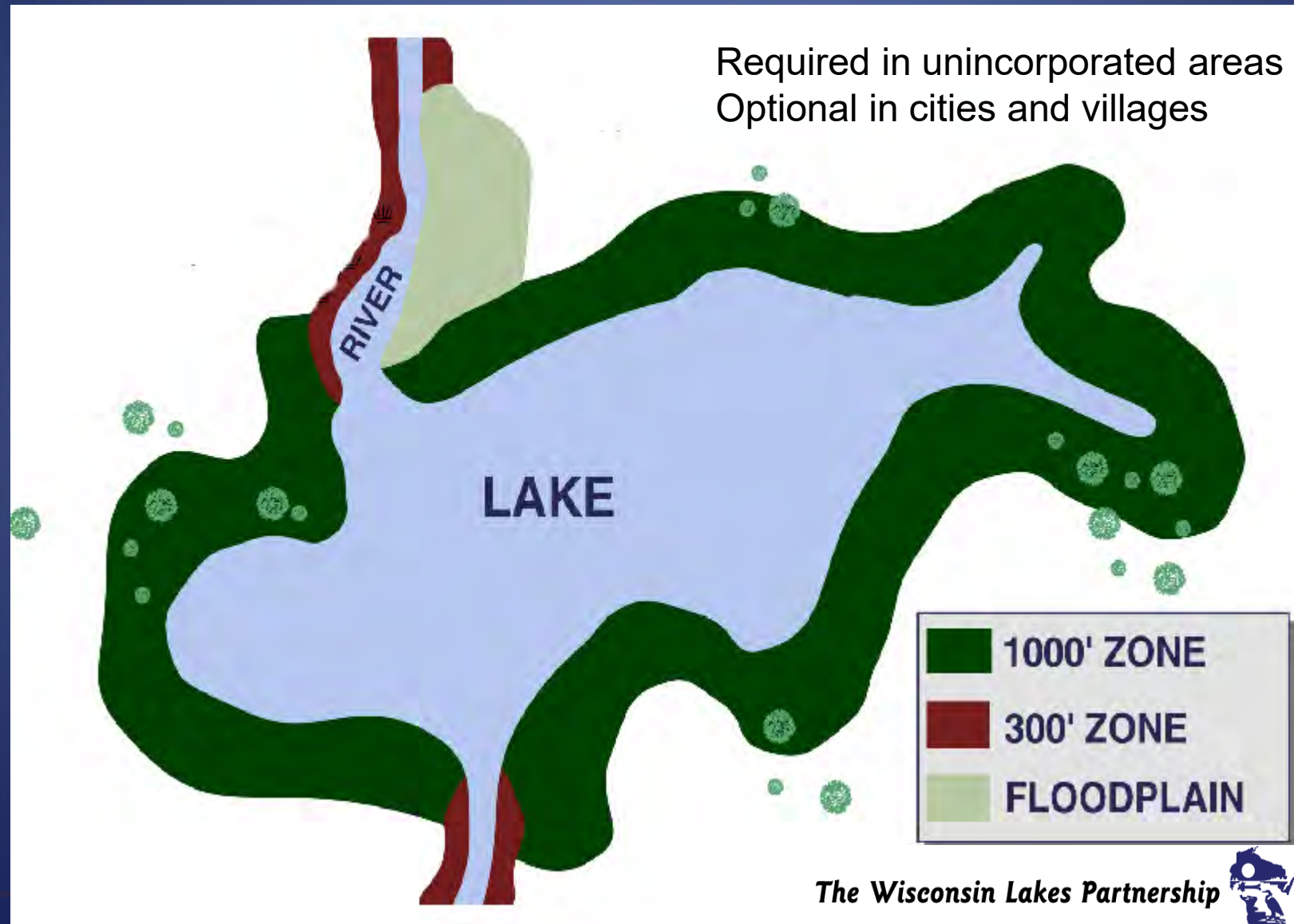


Overlay zoning

- A special zoning district, placed over an existing base zone(s), which creates special provisions in addition to those in the underlying base zone to protect a specific resource
- Examples
 - Shoreland zoning
 - Floodplain zoning
 - Wellhead protection
 - Airport overlay
 - Bluff zoning
 - Historic overlay
 - Transit corridor



Shoreland zoning applies near lakes & rivers



History of Shoreland Zoning

- 1848 – Wisconsin Constitution says navigable waters are “common highways and forever free”
- 1950s-60s – WI was looking for economic development options for the north. **Farming hadn't worked.** Recreation and tourism related to lakes were seen as the best option. Unprecedented shoreland development occurred in rural WI.
- 1968 – WI Water Resources Act required local governments to administer minimum shoreland and floodplain zoning standards

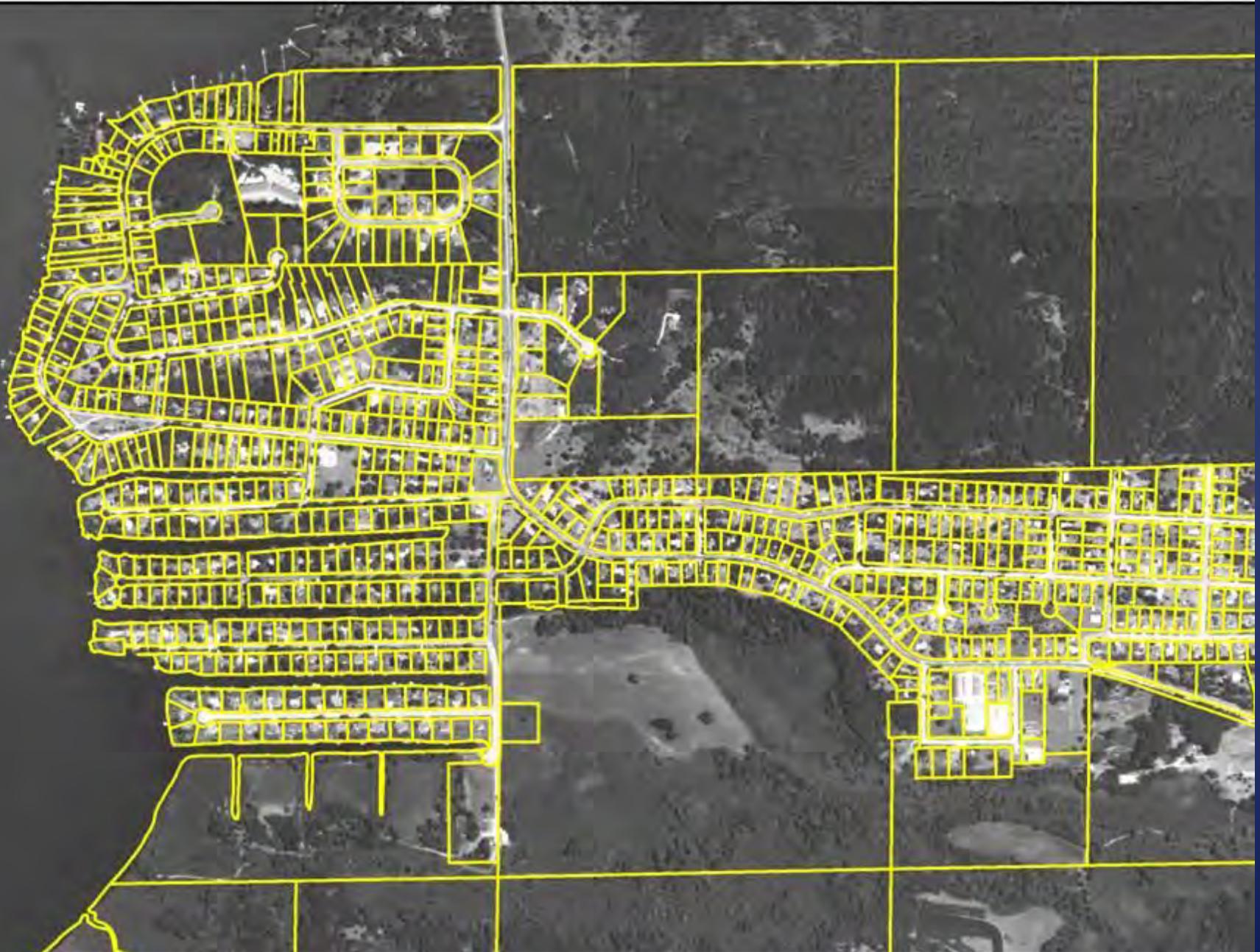


Harmony Grove, Columbia County – Lake Wisconsin

1940

1968

2005



Purposes of shoreland zoning

- Prevent and control water pollution
- Protect spawning grounds, fish and aquatic life
- Reserve shore cover and natural beauty
- Control building sites, placement of structures and land uses



Floodplain Zoning

Purposes: protect property owners and emergency service providers



Flooding

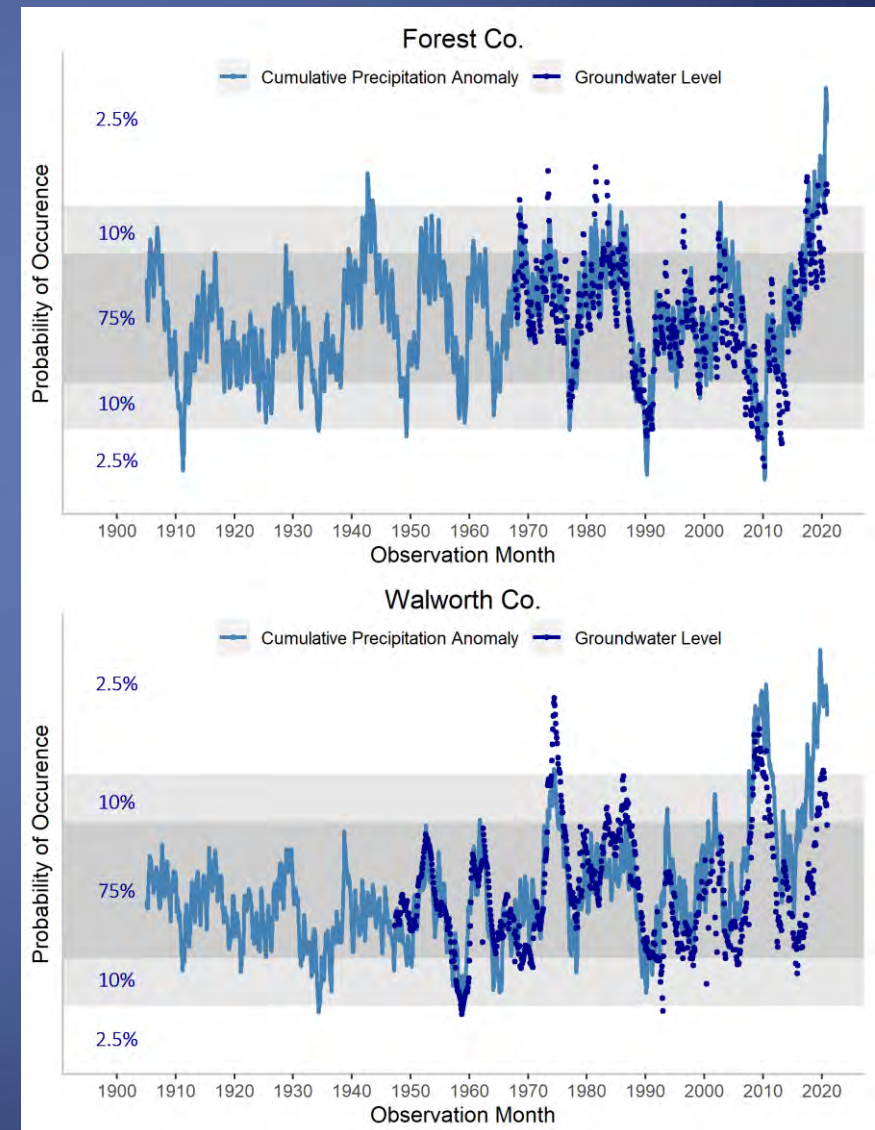
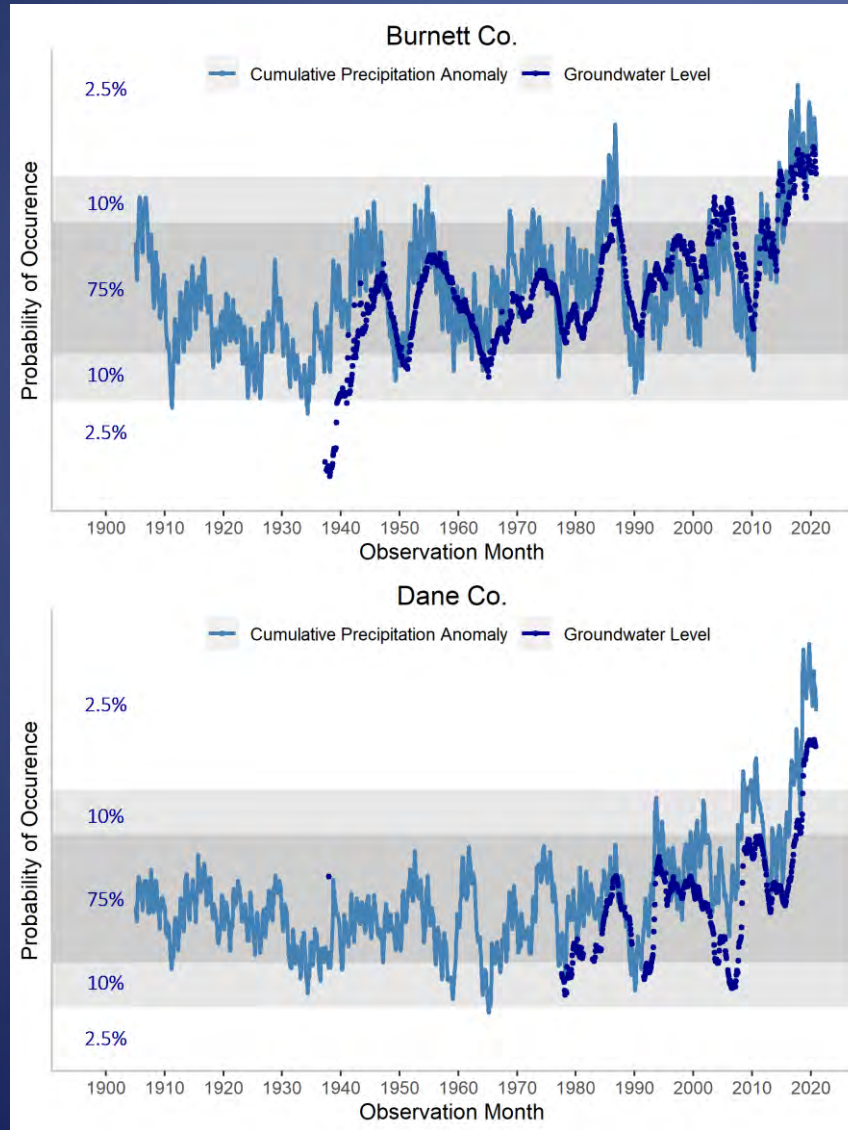
In Wisconsin we're seeing:

- more frequent and more intense heavy rainfalls
- a noticeable uptick in the number of flooding events



Groundwater flooding across Wisconsin

Too many water deposits, not enough withdrawals



Groundwater flooding across Wisconsin



Fish Lake, Dane County WDNR



Pigeon Lake,
Bayfield County 2020
KBJR6



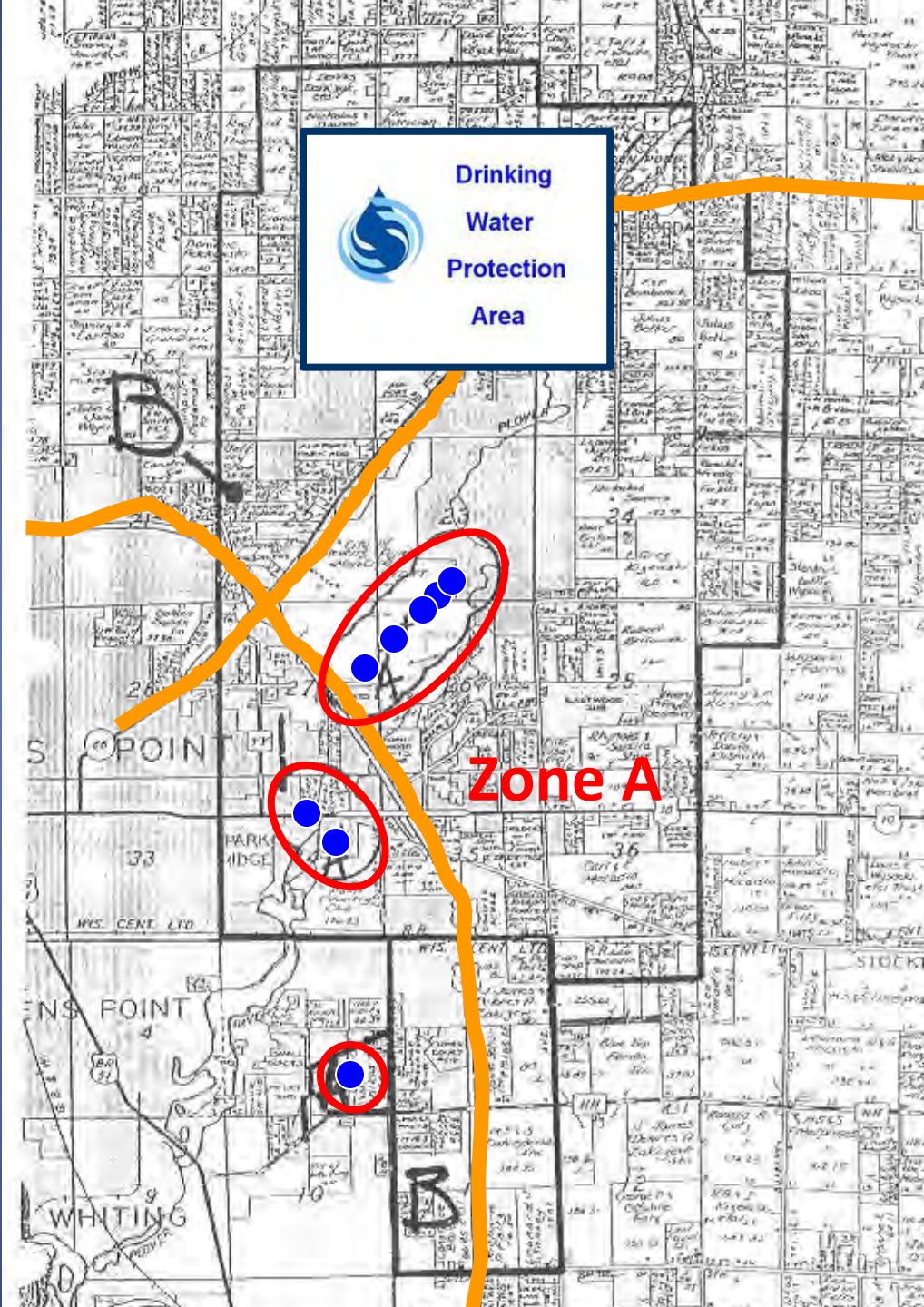
Lake Huron, Waushara County 2019 WDNR

Wellhead Protection Ordinance

Zone A – allows only land uses with low potential to pollute drinking water such as unfertilized parks

Zone B – allows more land uses but not gas stations, fertilizer plants, cemeteries, etc.

Municipalities can save \$ by keeping their drinking water safe

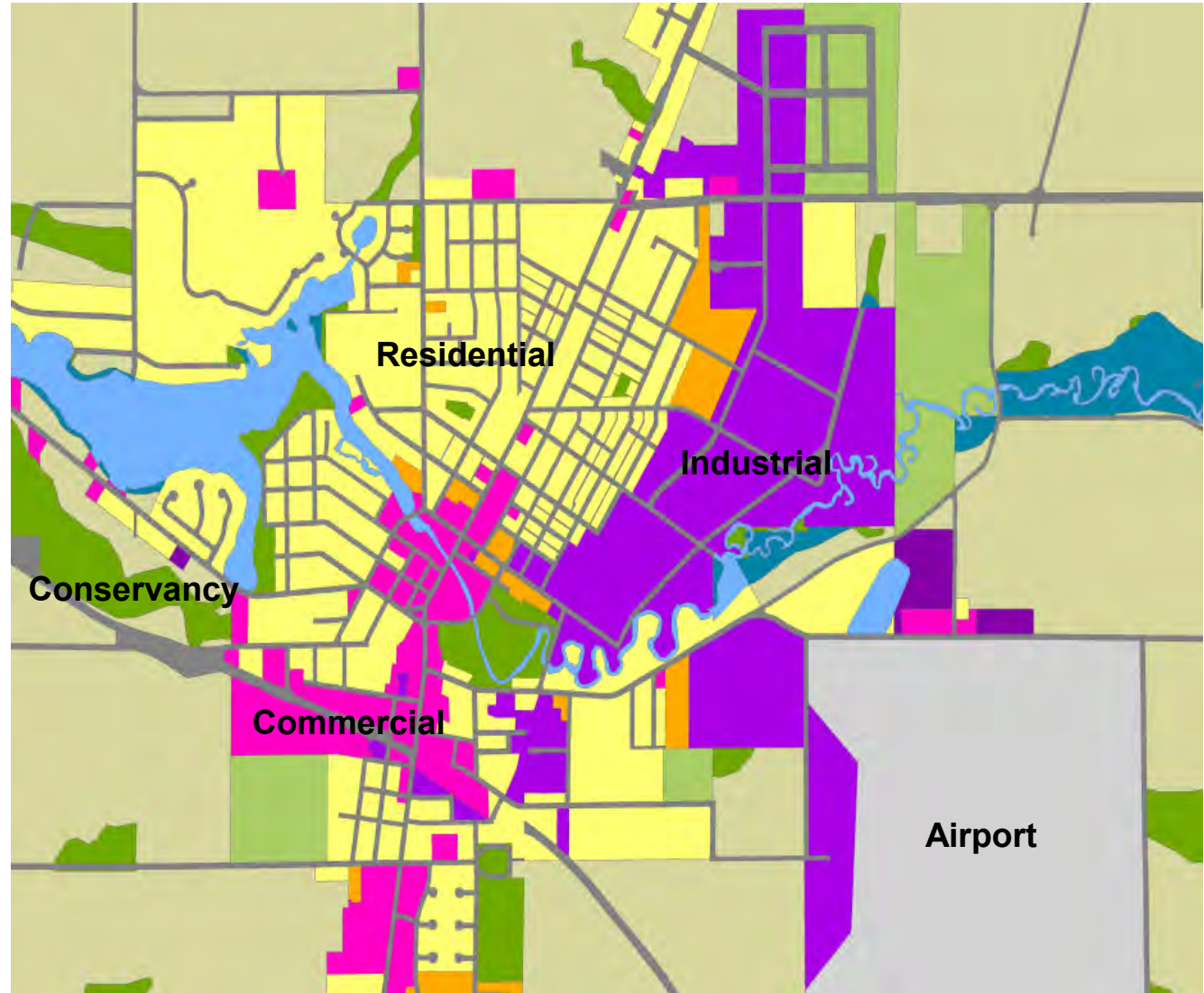




How does zoning work?

A zoning ordinance contains two parts:

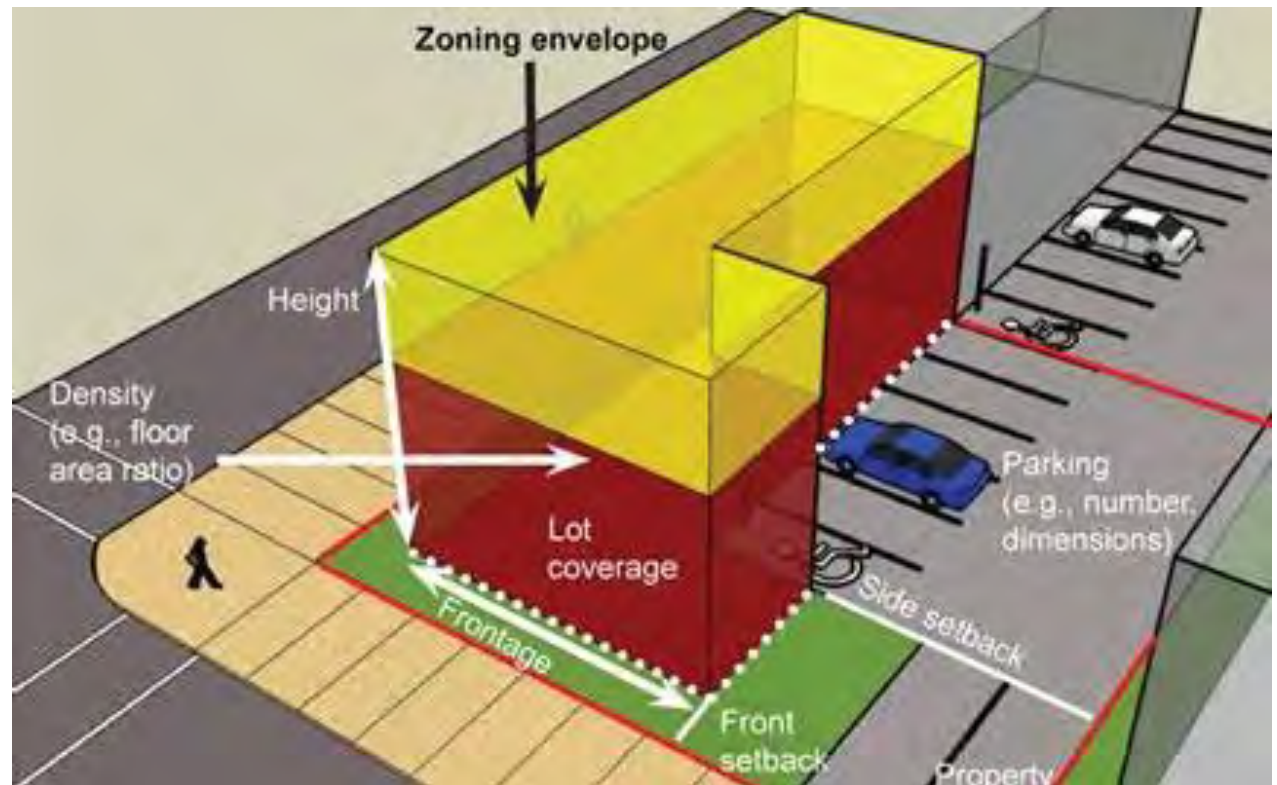
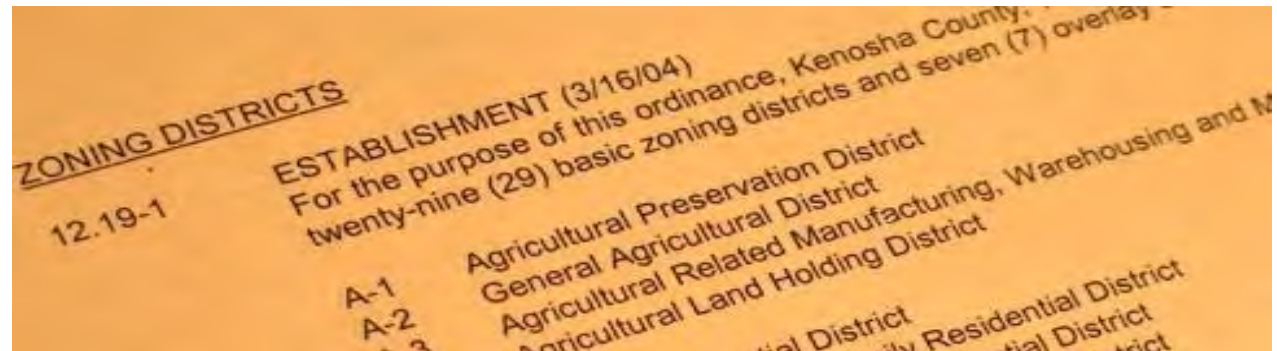
Zoning Map
divides the
community
into districts



A zoning ordinance contains two parts:

Zoning Text

- purposes
- uses allowed in each district
- dimensional standards i.e. lot size, density, setbacks, etc.
- requirements related to parking, signage, landscaping, etc.
- authority and procedures



Uses for each district:

Permitted Use

Use is listed and allowed by right in all parts of the zoning district

Granted by zoning administrator

Conditional Use

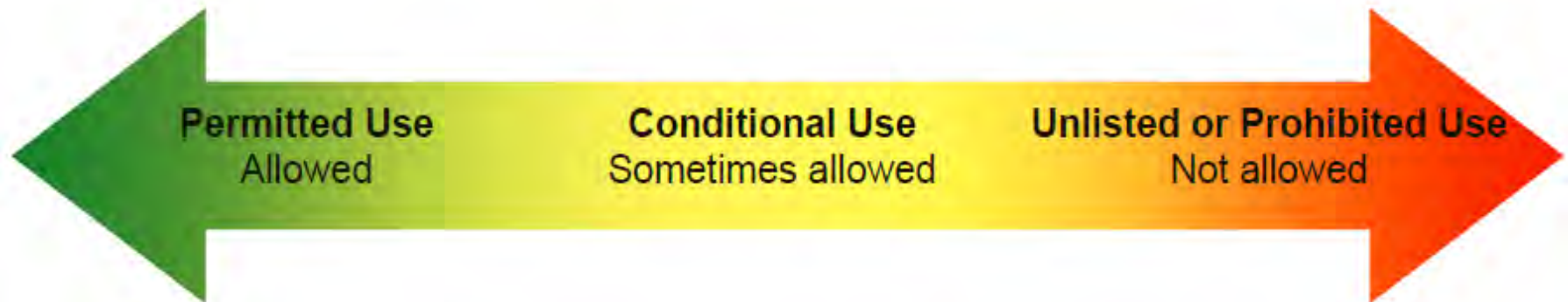
Use is listed for the district and may be allowed if suited to the location

Decided by zoning board, plan commission, or governing body

Prohibited Use

Use is not listed for the district or is expressly prohibited

May apply for rezone or use variance, if allowed

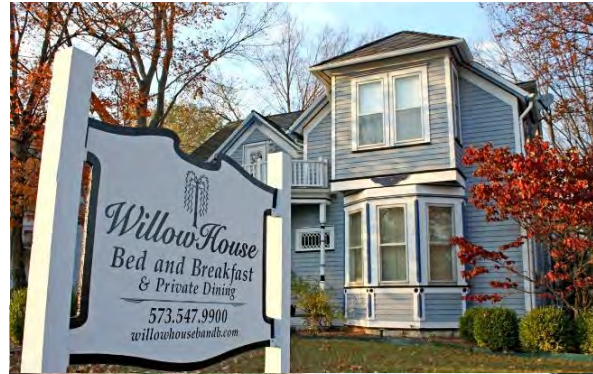


Ex. Residential District

Permitted Uses



Conditional Uses



Prohibited Uses



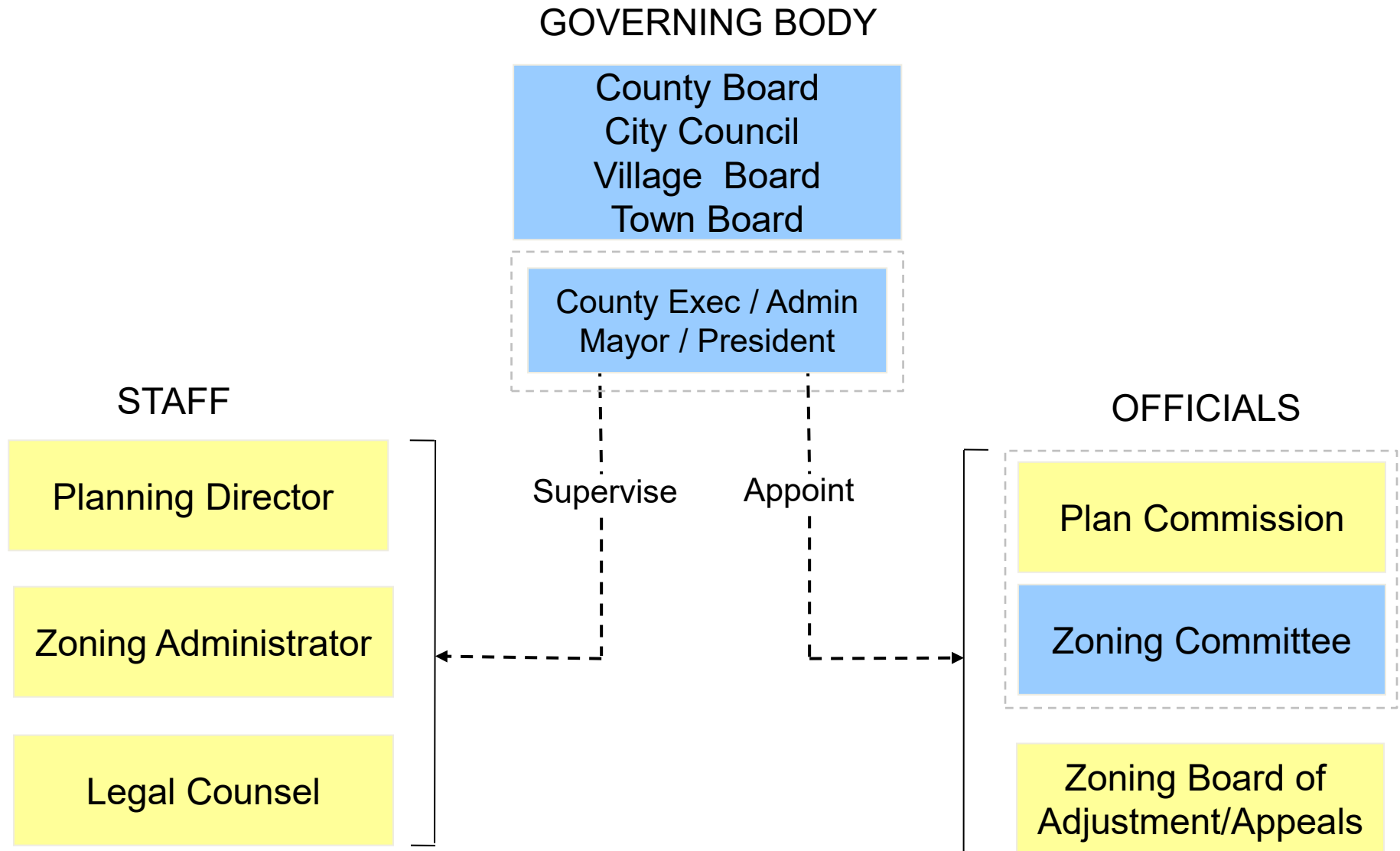
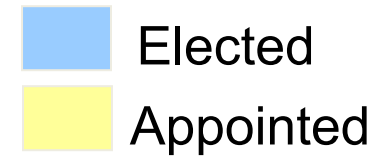
Sample

Webinar video and resources available

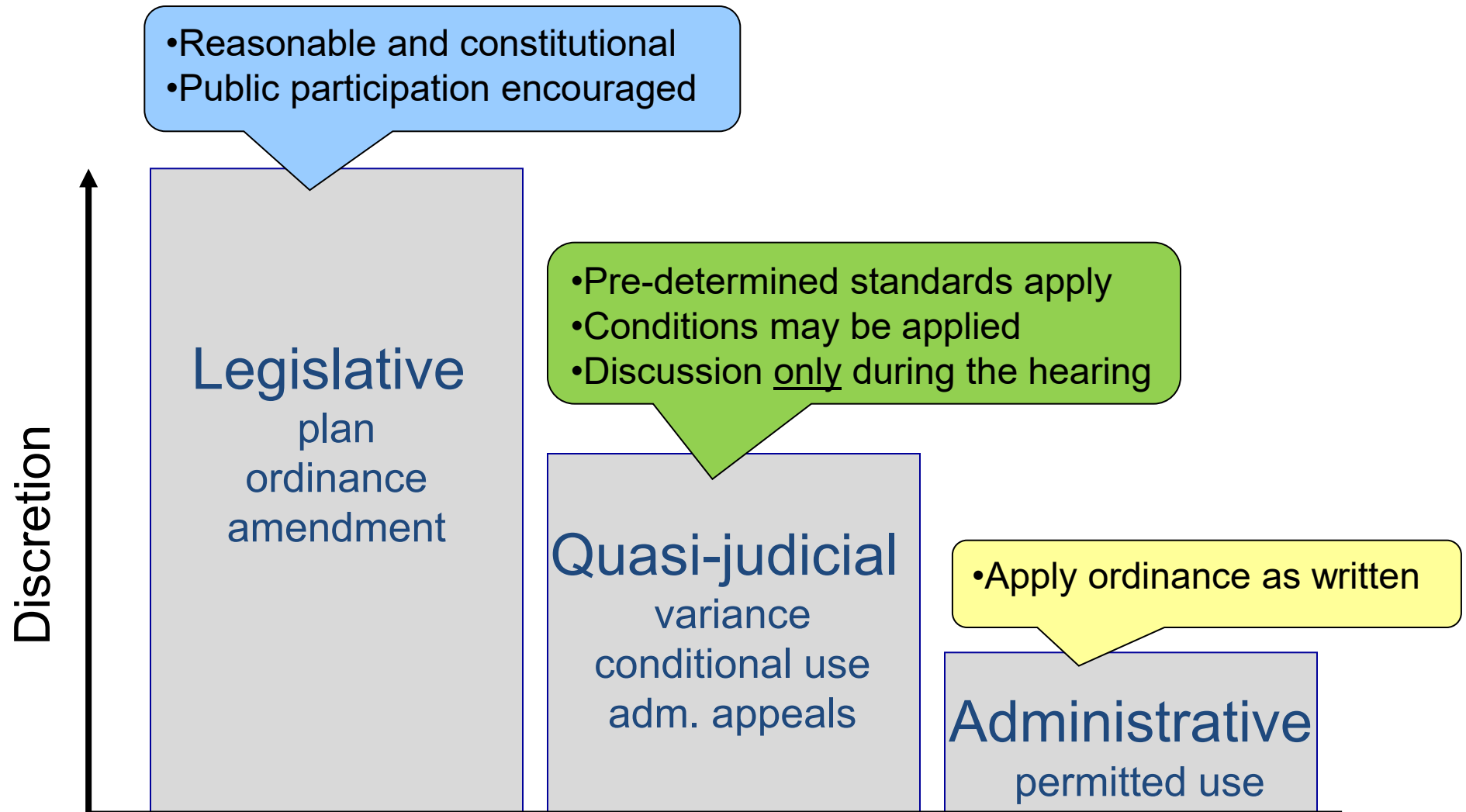
P Permitted
 C Conditional
 - Prohibited

Zoning District	A1 Intense Agriculture	A2 Light Agriculture	RR Rural Residential	R1 Single Family	R2 Multi Family	C1 Commercial
Livestock facility	P	C	-	-	-	-
Residential poultry and beekeeping	P	P	P	C	C	-
Agricultural tourism	C	C	C	-	-	C
Agriculture-related business	P	P	C	-	-	C
Roadside stand	P	P	P	-	-	C

Local Government Structure



3 Types of Decisions





Legislative



Quasi-judicial



Administrative

Decisions:

Governing Body



Plans, ordinances,
amendments

Conditional
uses?

Planning and Zoning Staff



Technical support

Permitted uses

Plan Commission



Recommendations

Conditional
uses?

Zoning Board



Variances

Administrative
appeals

Conditional
uses?

Relief Mechanisms

1. **Variance** – allowed “violation” of an ordinance standard (decided by zoning board)
2. **Appeal** – contested decision or interpretation of the zoning ordinance (decided by zoning board or circuit court)
3. **Map or Text Amendment (Rezone)** – change to the zoning ordinance (adopted by governing body with advisory recommendation from plan commission)

Variances

Variances

A variance allows a property owner to do something prohibited by the zoning ordinance

- Provide relief in limited, unusual circumstances
- Not meant to provide general ordinance flexibility




Variances

Area variances allow modification of a physical, dimensional or locational requirement (such as setback, frontage, height, bulk or density)

Use variances permit a landowner to put property to an otherwise prohibited use. Use variances are prohibited in shoreland zoning.

Variances

Webinar video and
resources available



The applicant has burden of proof to show that all **three statutory tests** are met:

1. unnecessary hardship
2. due to conditions unique to the property
3. not contrary to public interest

For floodplain variances, the applicant must show they meet an additional 13 standards.

Unique Property Limitations Test

- Conditions unique to the property include physical limitations such as steep slopes or wetlands
 - Circumstances of the applicant such as a growing family or need for a larger garage, are not a factor in deciding variances.
 - Physical limitations that prevent compliance and are common to a number of properties are best addressed by ordinance amendment.



Public Interest Test



- Public interests are the purpose and intent statements listed in the ordinance
 - Variances may not harm public interests

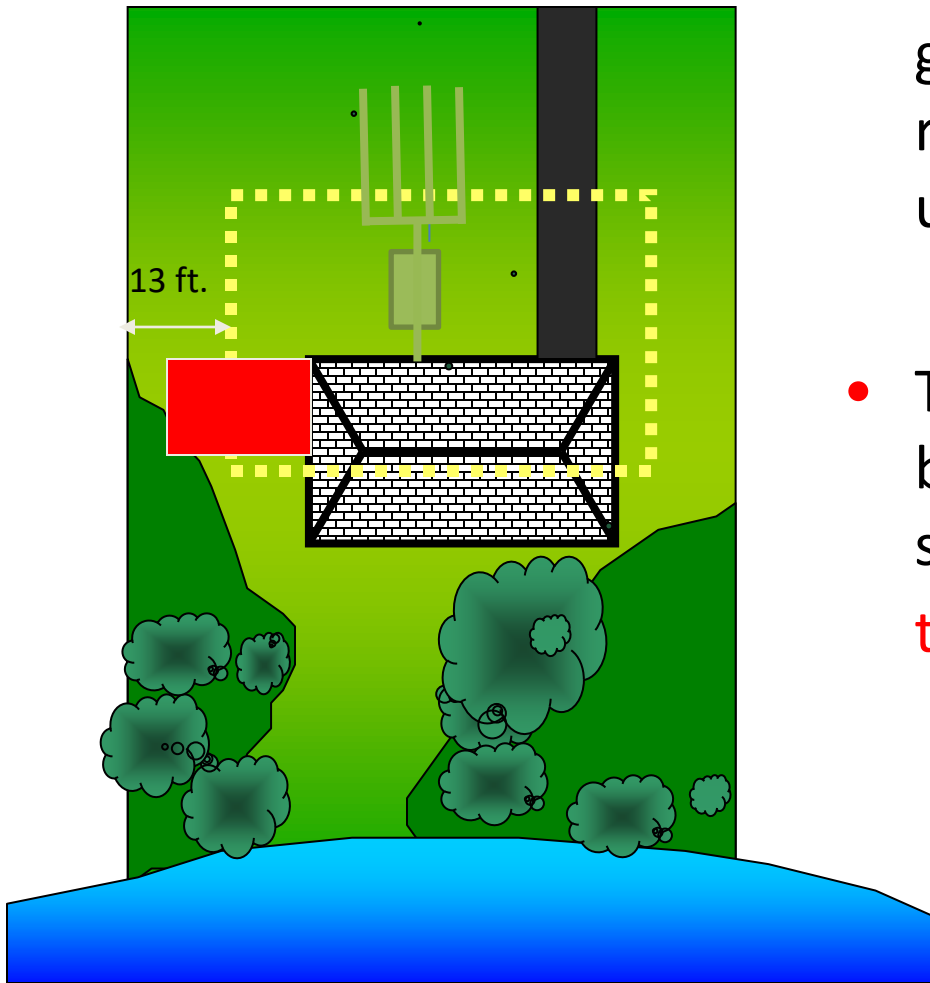
Unnecessary hardship test for area variances

When compliance with the ordinance would:

- unreasonably prevent the owner from using the property for a permitted purpose, or
- be unnecessarily burdensome in view of ordinance purposes



Unnecessarily Burdensome



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

Snyder v. Waukesha County, 1976

State v. Kenosha County, 1998

Zoning Amendments

Map amendment – change to district boundaries

Text amendment – change to district regulations (i.e. allowed uses, setback, etc.)

Legislative decision

- Must be reasonable and constitutional
- Consistent with comprehensive plan
- Rezone standards may be listed in zoning ordinance

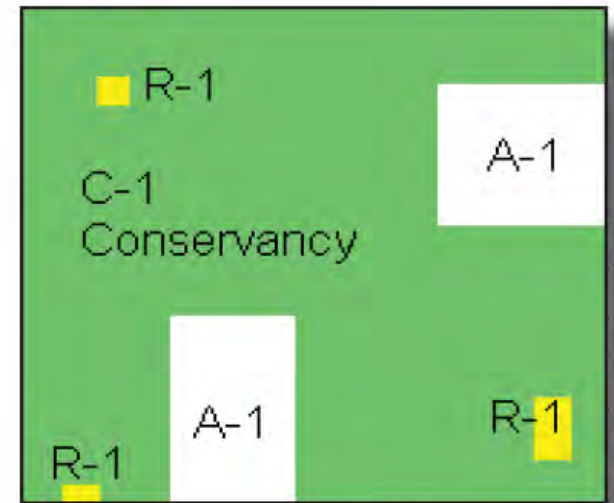
Sample Rezoning Standards

- ✓ The amendment is consistent with the comprehensive plan.
- ✓ The amendment will not be detrimental to property in the immediate vicinity or to the community as a whole.
- ✓ The amendment will not have a significant adverse impact on the ability to provide adequate public facilities or services
- ✓ The amendment will not have a significant adverse impact on the natural environment (i.e. air, water, noise, stormwater management, soils, wildlife, vegetation, etc.)
or the impact could be mitigated by improvements on the site or in the immediate vicinity.

Spot Zoning

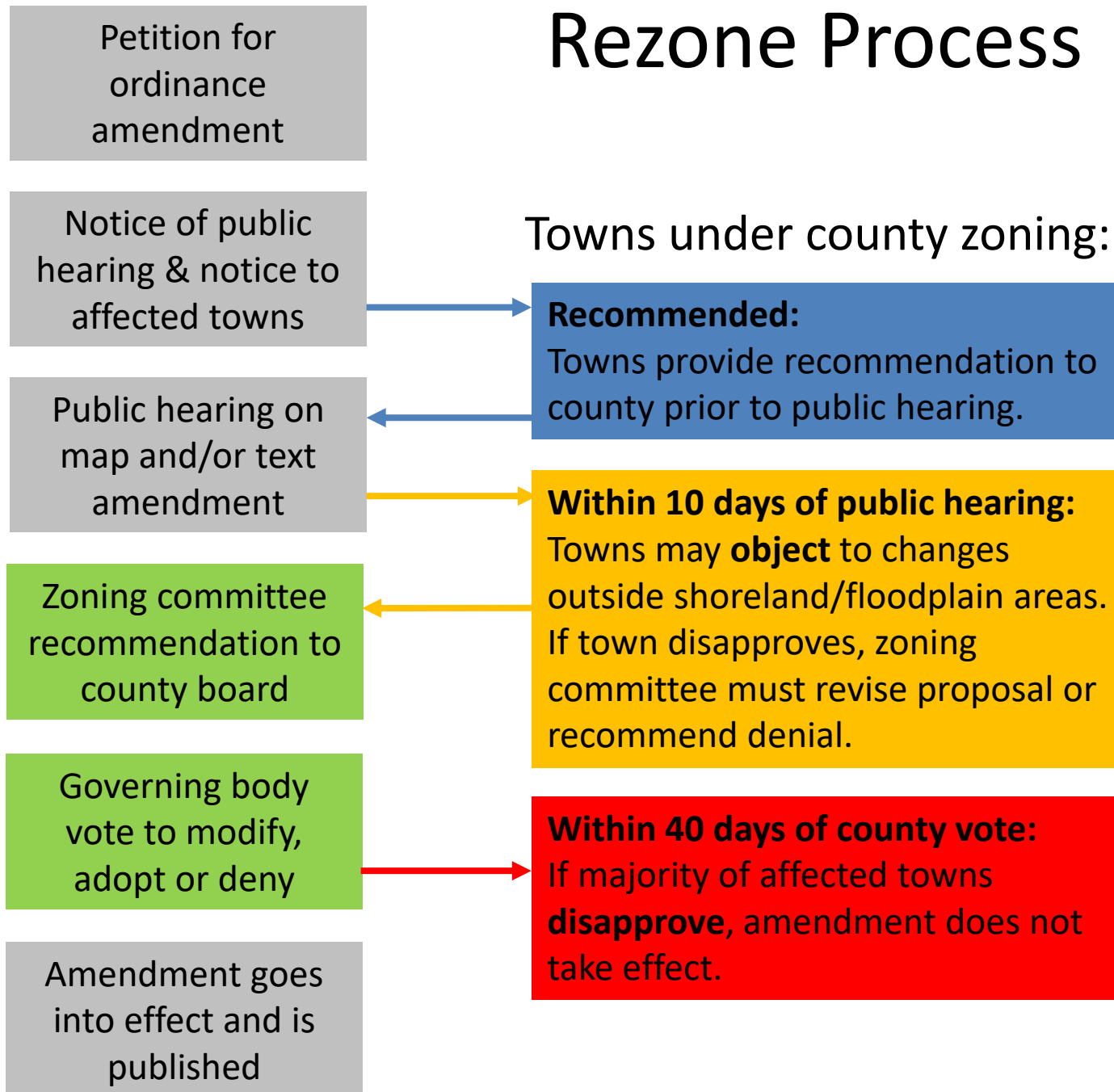
A rezoning “whereby a single lot or area is granted privileges which are not granted or extended to other land in the vicinity, in the same use district.” (Wisconsin Supreme Court)

- Not illegal per se
- Should be consistent with the land use plan
- May be approved where it is in the public interest (e.g. fire station, town hall) & not solely for the benefit of a property owner



Why have R-1 residential parcels popped up in an area supposedly designated for open space and farmland preservation? Spot zoning may be the culprit. (Graphic courtesy of Kevin Struck)

Rezone Process

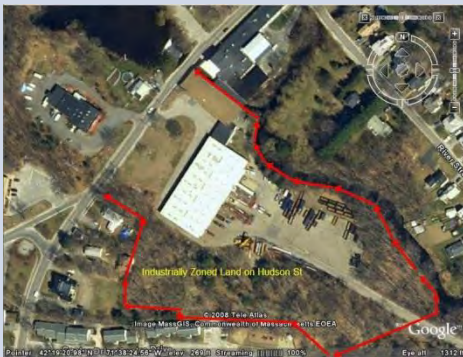


Nonconformities

Zoning – Nonconformities

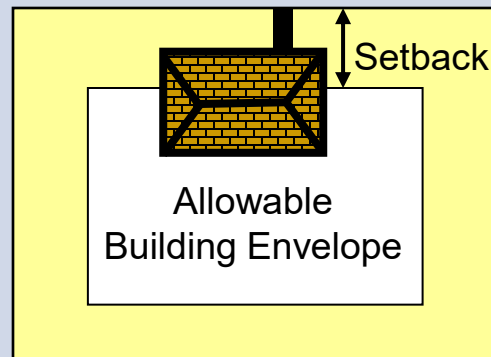
- Zoning nonconformities were legally established prior to adopting or amending a zoning ordinance but do not comply with current provisions
- 3 types:

1. Use



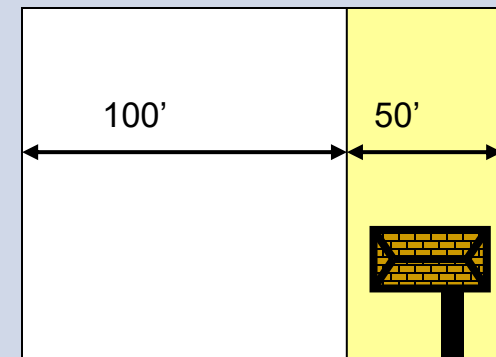
Ex. industrial use in a residential zoning district

2. Structure



Ex. structure does not meet setback requirements

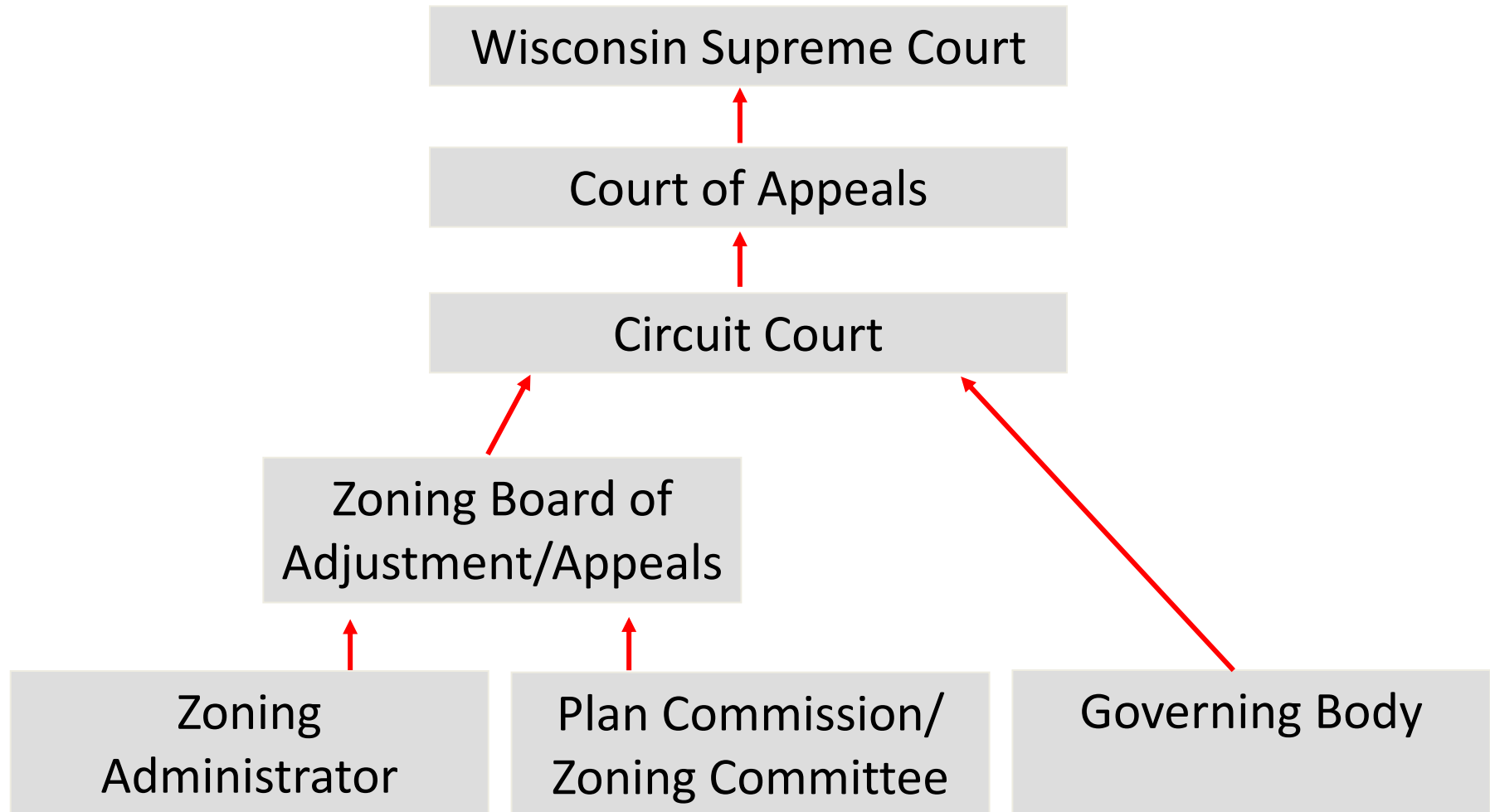
3. Lot



Ex. lot does not meet dimensional requirements

Appeals and Legally Defensible Decisions

Appeal of Zoning Decisions



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?

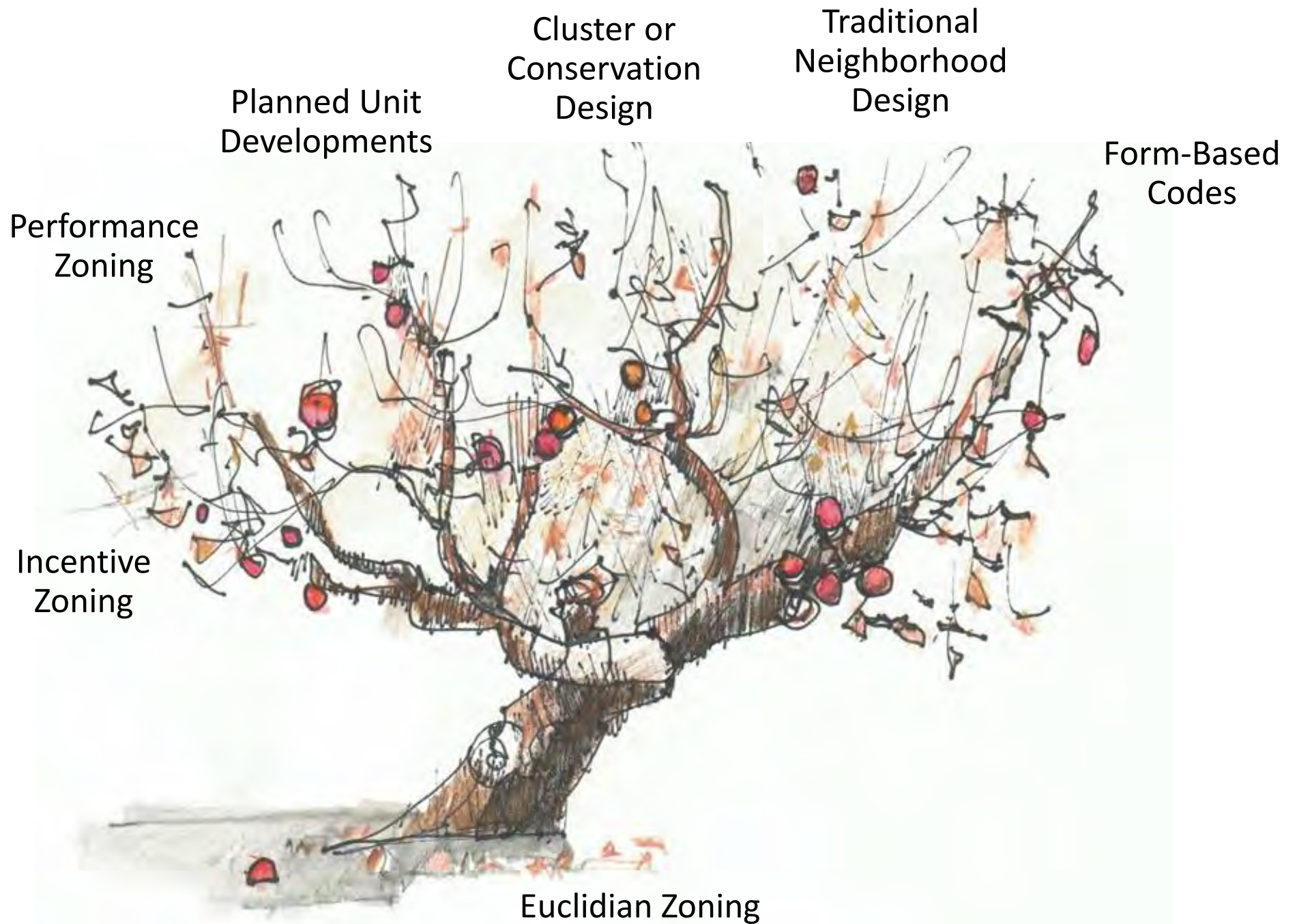


Evidence

Do facts in the record support your
decision?



Newer Approaches to Zoning



Planned Unit Development



- Development is proposed, approved and built as a package or “unit”
- Site plan review allows negotiation between municipality and developer
- Usually includes a mix of land uses, intensities, and other design features
- Typically allowed as conditional use or special zoning district



Cluster / Conservation Development



- Buildings grouped on small lots to preserve open space, natural features or other amenities
- May be accompanied by density bonus
- Open land typically protected with conservation easement

Performance Standards

Traditional Standard

“Impervious surface coverage shall be limited to 25% of the lot to minimize runoff.”



Result: 75% of lot is maintained in green space; most runoff directed to storm drains.

Performance Standard

“Stormwater runoff generated by the development shall be retained on site. Treatments may include swales, filter strips, ponds, wetlands, or underground storage.”



Result: Vegetative swale, no curbs, and landscaping combine to provide on-site infiltration.

Form Based Codes



T1 Natural



T2 Rural



T3 Suburban



T4 General Urban



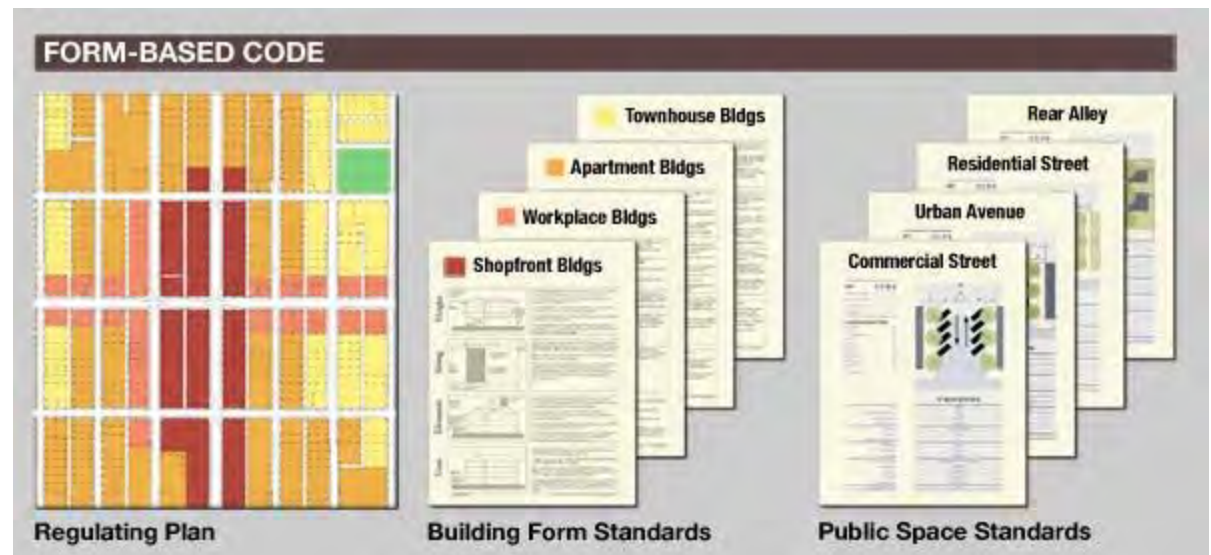
T5 Urban Center



T6 Urban Core



- Focus on urban form rather than use
- Prescribes physical outcomes (build-to lines, allowable building types, roadway widths, location and form of public spaces, etc.)
- Strong use of visuals



Zoning Approach



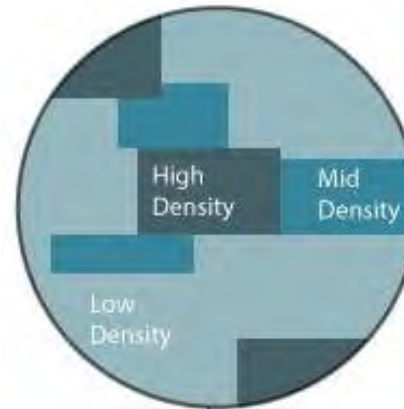
Functional Zoning

- Creates a zone for each land use type
- Regulates uses and dimensional standards (height, setbacks, etc.)



Form-Based Zoning

- Regulates physical form rather than land use type
- Promotes a certain look or sense of place



Performance Zoning

- Describes acceptable land use intensities or outcomes
- Flexibility in form and function of development



Incentive Zoning

- Reward-based system
- Bonus in exchange for urban amenities

Hybrid Codes - Incorporate elements of all of the above

Publishing Options

Unified Development Ordinance –

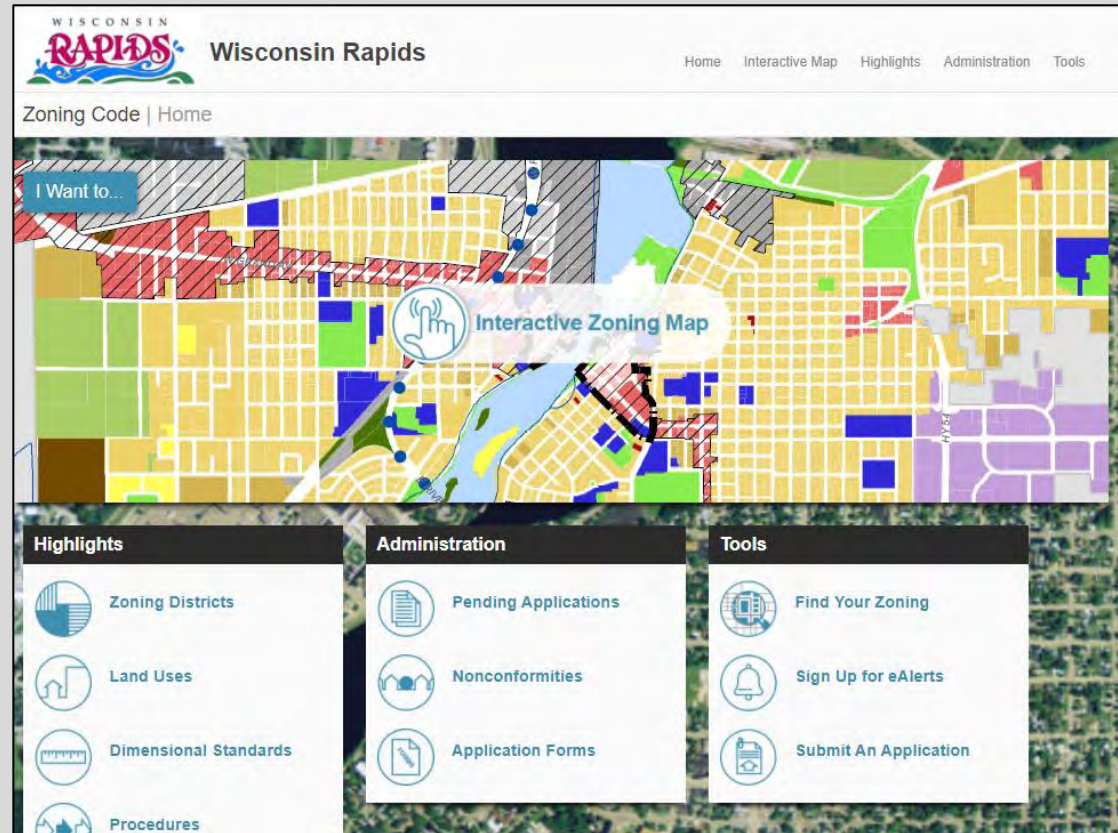
Incorporates zoning, subdivision, and other land development issues

UNIFIED DEVELOPMENT CODE



Interactive Zoning Code –

Interactive zoning map allows user to access to regulations, procedures, applications, etc.



In conclusion

1. The pattern of a community is the result of many individual land use decisions over time
2. Zoning relies on consistent application of current rules by local officials & staff
3. Regular zoning updates are valuable to address emerging issues and changing uses
4. Zoning can be used with other land use tools to achieve community goals

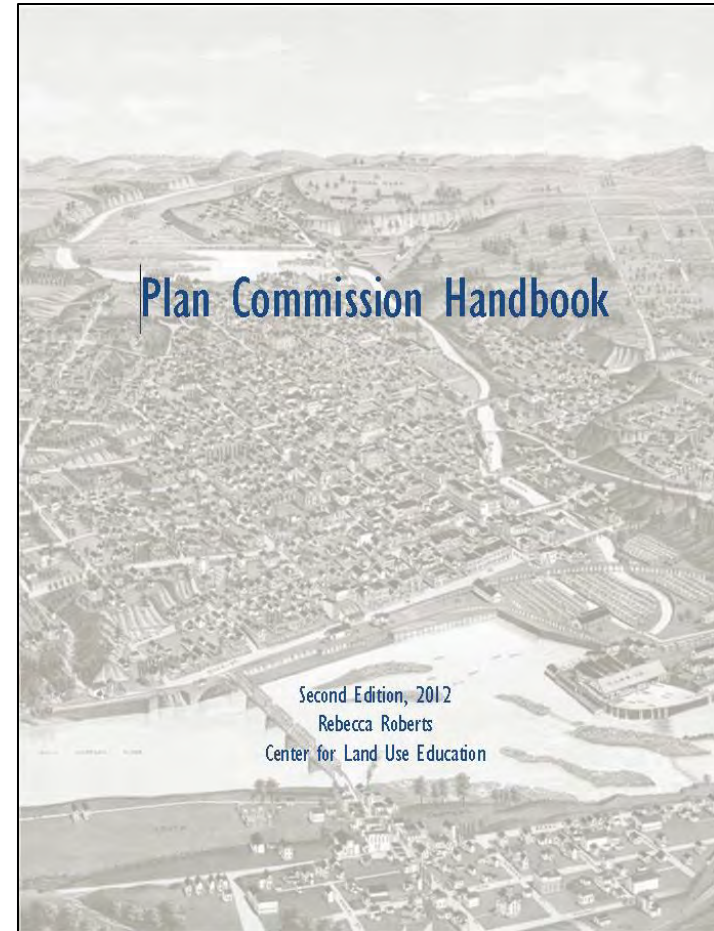


Recommended resources

Plan Commission Handbook

- I. Introduction to the Plan Commission
- II. Procedural Responsibilities
- III. Community Planning
- IV. Public Participation
- V. Plan Implementation
- V. Ordinance Administration
- VI. Zoning Regulations
- VII. Subdivision Regulations

Includes forms, worksheets, glossaries
and recommended resources

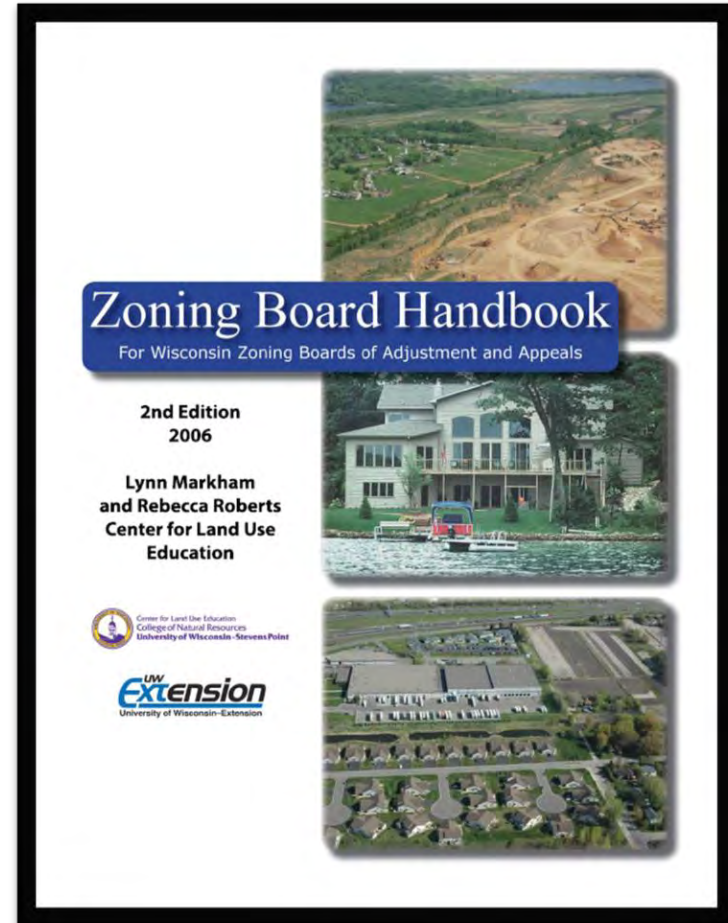


www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx

Zoning Board Handbook

- I. Zoning Board Basics
- II. Laws that Apply to the Zoning Board
- III. Zoning Board Decision Process
- IV. Decisions of the Zoning Board
- V. Appeals of Zoning Board Decisions
- V. Improving Zoning Board Decisions

Includes sample application, public hearing, and decision forms



<https://www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/Zoning.aspx>

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Preparing for a Digital Future

Information and community examples to assist in improving digital communication through your municipal website. Drive citizens to important information, hold remote meetings and conduct online training.



Plan Commission Training

Plan Commission Training is designed to orient new members and interested citizens to the roles and responsibilities of the plan commission and to serve as a refresher for veteran members of the commission.



Zoning Board Training

Zoning Board Training is designed to provide an introduction for new zoning board members and staff to zoning board roles, procedures and standards

<https://fyi.extension.wisc.edu/landusetraining/>

Recorded Webinars

- Role of the Plan Commission
- Role of the Zoning Board
- New Rules for Conditional Uses
- Variances
- Refreshing Your Zoning Ordinance



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

<https://www.eventbrite.com/e/planning-and-zoning-webinars-registration-139559924491>

Upcoming Webinar

Meeting & Hearing Conduct

May 18, 1-2 pm



Learn how to conduct more effective meetings and hearings. Understand legislative and quasi-judicial decision-makers and the importance of creating an effective record of decisions.

<https://www.eventbrite.com/e/planning-and-zoning-webinars-registration-139559924491>

Upcoming Webinars

Annual Case Law and Legislative Update

May 4, 10:30-noon



Review recent court decisions and legislation from the past year affecting planning and land use decision-making in Wisconsin.

Public Participation in Land Use Decision-Making

June 15, 10-11:30 am



Learn how to modify existing procedures and plan for more effective public involvement. Designed for local land use decision-makers.

<https://charge.wisc.edu/LocalGovernment/Workshops.aspx>

Thank You!

Questions?

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rroberts@uwsp.edu



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Extension
UNIVERSITY OF WISCONSIN-MADISON

Rebuilding & expanding structures very close to the shore

- Nonconforming structures



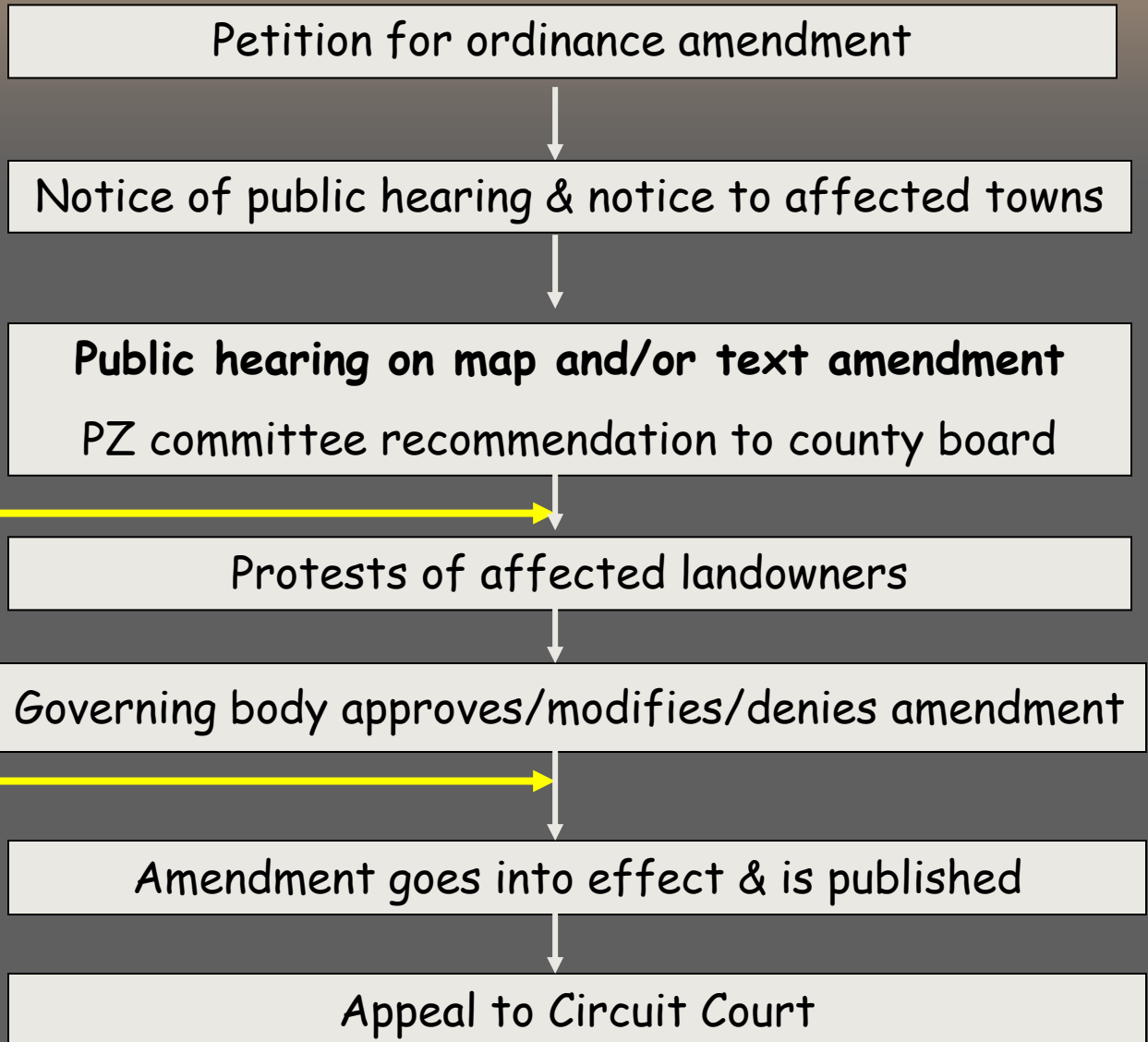
County Ordinance Amendment Process

Stage 1 for towns*

If town disapproves, PZ must revise proposal or recommend denial of amendment

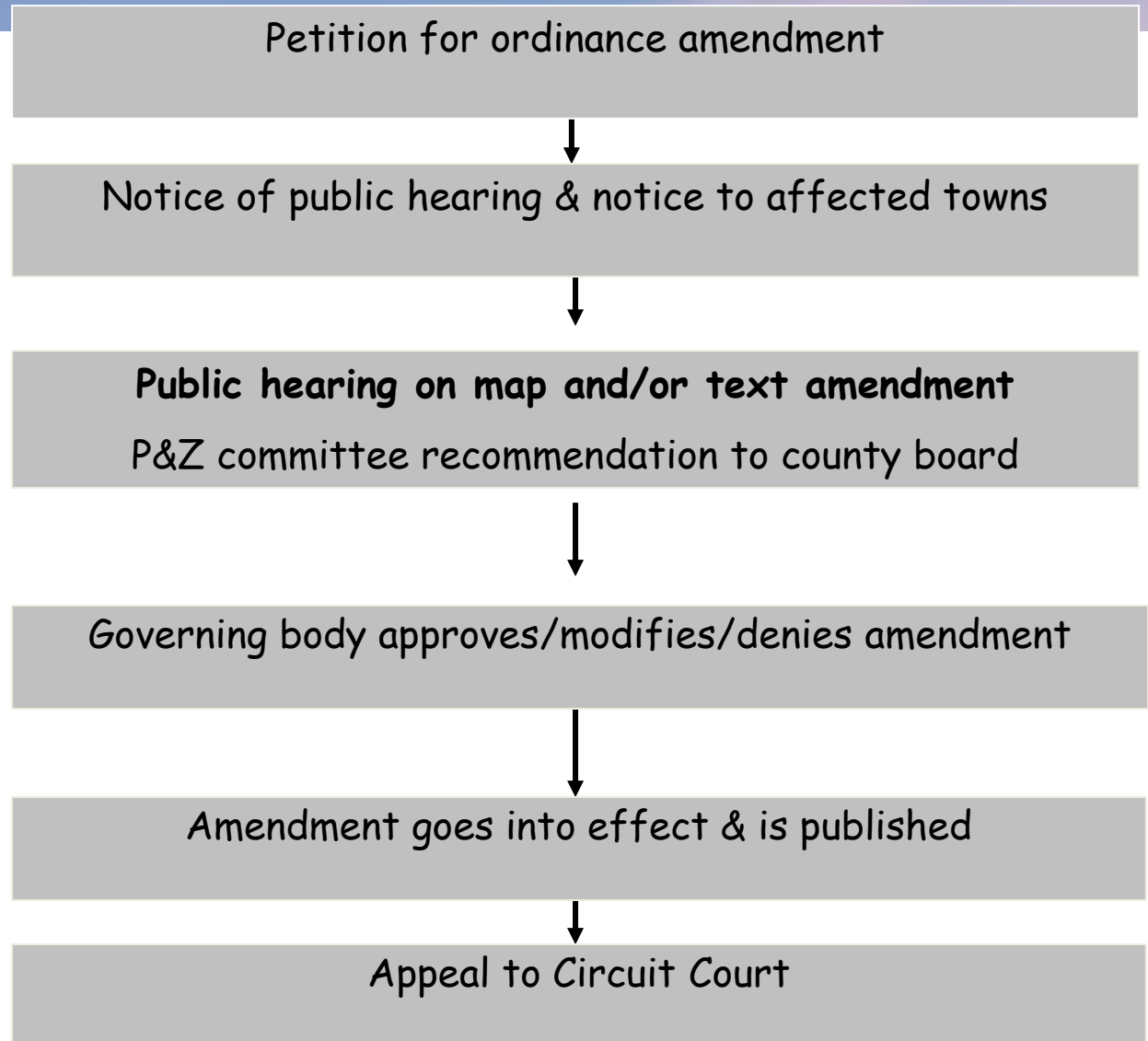
Stage 2 of for towns*

If majority of affected towns disapprove, amendment does not take effect



*Shoreland, shoreland-wetland and floodplain ordinances are not subject to town dis/approval

Zoning Amendment Process



Zoning amendments

For towns with general county zoning, the zoning ordinance is only amended if the county AND the majority of towns affected agree to the amendment

CUP considerations from Bayfield County

- (1) Zoning Ordinance and all other applicable laws.
- (2) Consistency with Town Comprehensive Plan (more specific detail)
- (3) Consideration of the Town Board Recommendation
- (4) Consistency with County Comprehensive and Land Use Plan (general overview)
- (5) Relevant Public Input
- (6) Consideration of the Departmental file report and site specifics
- (7) The maintenance of safe and healthful conditions.
- (8) The community or general welfare and economic impacts of the proposal.
- (9) The prevention of the overcrowding of a natural resource, such as a lake, river or stream.
- (10) The prevention and control of water pollution (including sedimentation), air pollution and noise.
- (11) Existing topographic, drainage features and vegetative cover on the site.
- (12) The location of the site with respect to floodplains and floodways of rivers or streams.
- (13) The erosion potential of the site based upon degree and direction of slope, soil type, and vegetative cover.
- (14) The location of the site with respect to existing or future access roads.
- (15) The amount of liquid wastes to be generated and the adequacy of the proposed waste disposal systems and water supply systems.
- (16) The demand for public services, such as police and fire protection, solid waste disposal, schools, road maintenance, sewer and water facilities, etc., which would be affected by the proposed use and the adequacy of existing services to meet the increased demand.
- (17) The potential impact of the proposed use on other lands and land uses in the vicinity and the extent to which it would be compatible or incompatible therewith.

Score card?

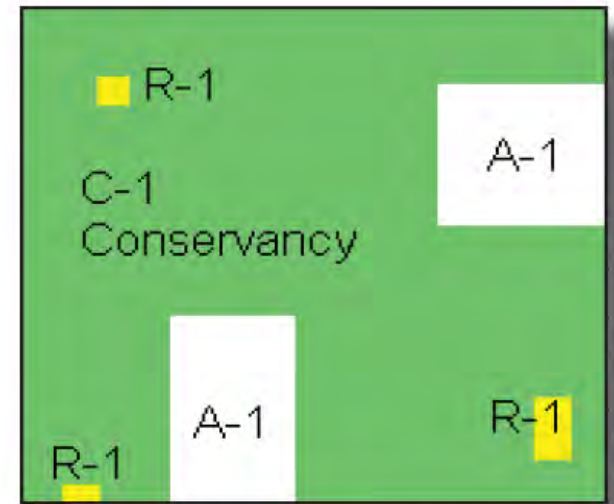
Weighted evaluation?

Guide?

Need to talk about all factors?

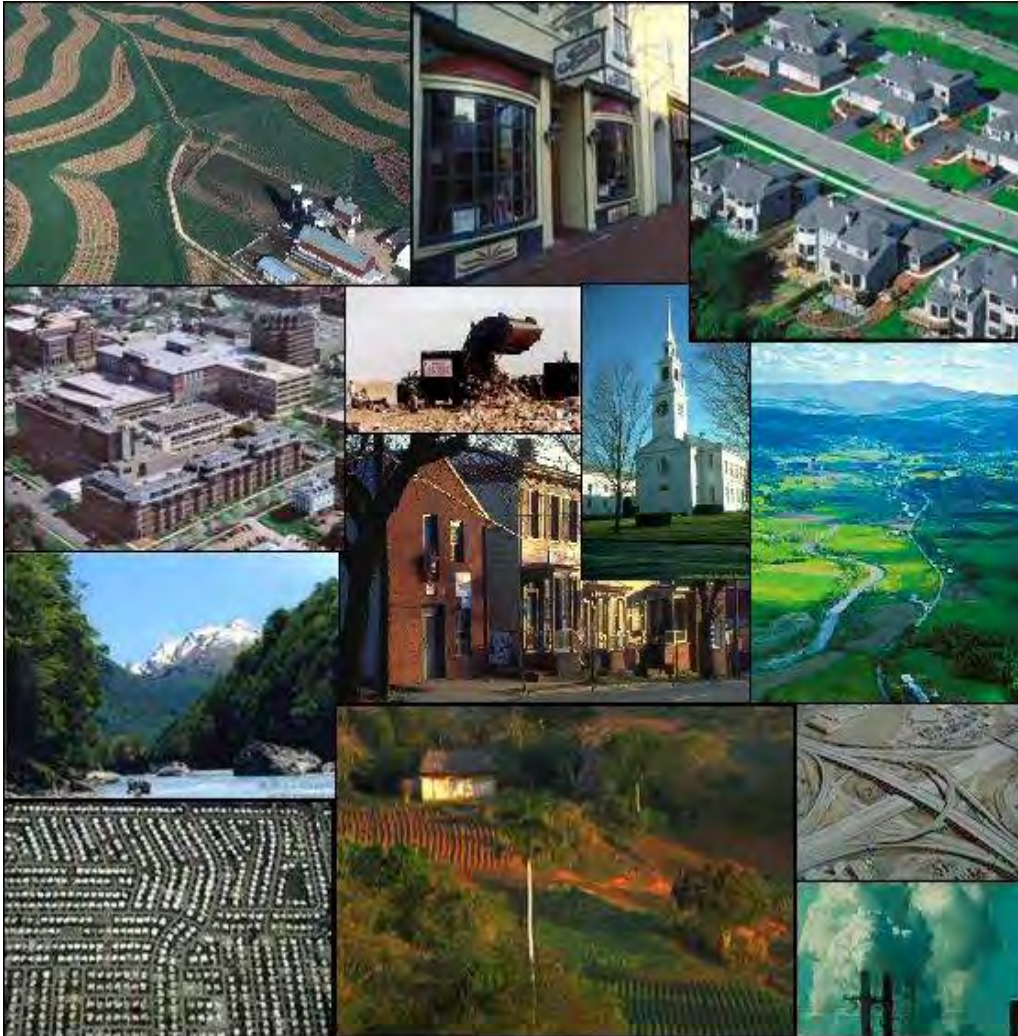
Potential long-term effects of reducing spot zoning

- Minimize land use conflicts
- Maintain working lands in the county
- Large landowners get less \$ for selling land
- Taxes rise less due to cost-efficient local government services



Why have R-1 residential parcels popped up in an area supposedly designated for open space and farmland preservation? Spot zoning may be the culprit. (Graphic courtesy of Kevin Struck)

Purposes of Zoning



Zoning is one tool to achieve community goals such as:

- Public health, safety, and welfare
- Natural resource protection
- Community character and aesthetics
- Protection of public and private investments

Variances

- Self-created hardship: an applicant may not claim hardship because of conditions created by his or her actions
- Loss of profit or financial difficulty do not constitute hardship
- A zoning board may consider an error of local government staff when deciding whether to grant a variance
- Lack of objections from neighbors does not justify a variance
- Nor do nearby ordinance violations
- A variance runs with the property to future property owners



Why do variance decisions matter?

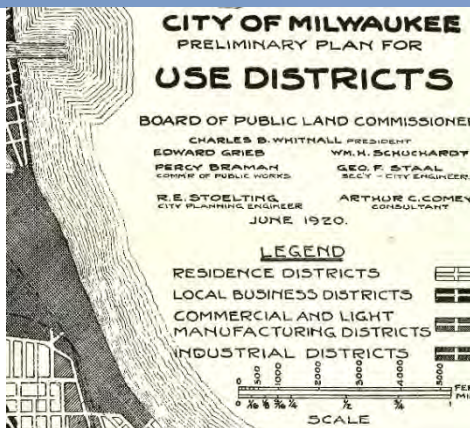


Purposes for roadway setbacks

- Safety
- Accommodate road widening & utility replacement

Granting variances reduces these purposes

Key Dates in Wisconsin



1920 – First Wisconsin zoning ordinance created by City of Milwaukee

1923 – Zoning upheld by Wisconsin Supreme Court

1929 – Wisconsin Legislature authorizes zoning to regulate uses in rural areas – three zones: farming, forestry, recreation

1933 – Oneida County adopts first comprehensive rural zoning ordinance in the United States

1950-1990 – Increasing development pressure (10,000 road miles, loss 4M acres farmland, 60% undeveloped lakes, forest fragmentation)

1968 – Local governments required to administer minimum shoreland / floodplain zoning regulations

1998 – Less than 1/3 of local governments had a land use plan

1999 – Wisconsin adopted Comprehensive Planning Law and grant program

2010 – Zoning must be consistent with a comprehensive plan