

## **SECTION III: ZONING BOARD DECISION PROCESS**

### **8. Application Process**

Both zoning board members and applicants benefit from a clear understanding of the application process for zoning board requests (variances, administrative appeals, and in some cases conditional uses) and the reasons for that process.

Typically persons (applicants) seeking zoning permits first contact the zoning staff to explain their development plans and obtain the necessary permit applications. Most applicants are able to get their permits directly from the zoning staff. If the applicant is seeking a conditional use permit, however, the governing body, planning commission/committee, or zoning board (as specified by local ordinance) makes the decision. If applicants want to do something that is not allowed by zoning ordinances, they may apply for a variance (which is decided by the zoning board) or a rezone (which is decided by the governing body). Applicants who disagree with the zoning staff's interpretation of the ordinance, may file an administrative appeal, which is decided by the zoning board.

In this chapter you will find legal and practical advice regarding the application process for variances, administrative appeals, and conditional uses. Specifically, you will learn:

- Who completes the application?
- When do applications need to be complete? Can subsequent changes be made?
- What is included in a complete application?
- Who reviews the application?
- Are zoning staff reports recommended and what do they contain?

#### **Who completes the application to the zoning board?**

While statutes do not specify who completes the application, the same person who will represent the landowner at the zoning board hearing (typically the landowner, their attorney, or agent) commonly does it.<sup>1</sup> Zoning staff often explain the rationale behind the regulations, what application materials must be completed, and the type of information and level of detail that must be included in the application. Due to their experience with the ordinances and processes, the staff may also help the applicant fill out the application by providing technical information. However, the landowner or their representative is ultimately responsible for providing a complete and accurate application.

#### **When do applications need to be complete? Can subsequent changes be made?**

The application for a conditional use permit must be completed by the first time notice is given for the final public hearing on the matter, unless an ordinance expressly allows later submission

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<sup>1</sup> Wis. Stat. §§ 59.694(6) & 62.23(7)(e)6

of information.<sup>2</sup> Although Wisconsin courts have expressly required this only for conditional uses,<sup>3</sup> we recommend applying this policy to all decisions made by the zoning board in order to:

- Avoid creating an incentive for permit seekers to withhold controversial information from their applications until during or after the public hearing.
- Provide ample time and opportunity for interested parties to review the complete application, digest the information, and develop their ideas prior to the hearing, so that they are prepared to discuss all of their concerns.

A simple and straightforward way to ensure that applications are complete prior to notice being given is to require that the application be complete at the time of submittal. Waukesha County uses this approach, and if any changes from the original application are desired after the public notice has been sent, a new application and fee are required.<sup>4</sup>

### **What is included in a complete application?**

Standards for what must be included in an application to the zoning board vary widely and are decided locally. A balance must be struck between having sufficient information to make a good decision and avoiding unnecessary data that may lead to confusion or simple overload for the zoning board members. At the same time, requiring more information in the application can result in a better-informed discussion of the application and more efficient decision-making, with most applications being decided in one hearing. Regardless of the amount of information required, high quality information, such as an accurately scaled site plan, is necessary.

We compiled the following list of required application materials from multiple municipalities.<sup>5</sup> Compare it to your current application standards and add, modify, or delete as appropriate based on your purposes and local issues. You may want to tailor your rules for what must be included in an application based on the specific request for which the application is submitted, rather than a generic list of information that must accompany all applications. For instance, an application requesting to change only the use within a building probably doesn't need a soils report or topographic survey.

- A. A legal description covering the property for which the permit is sought
- B. Written description of and justification for the proposed permit, consisting of the petitioner's evaluation of the request against the standards in the ordinance

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<sup>2</sup> *Weber v. Town of Saukville*, 209 Wis. 2d 214, 562 N.W.2d 412 (1997)

<sup>3</sup> LoisLaw search 3/22/05 revealed no similar standard for variances or administrative appeals.

<sup>4</sup> Waukesha County Board of Adjustment variance and appeal form, available: [https://secure.waukeshacounty.gov/filelibrary/Files/Variance\\_and\\_Appeals.pdf](https://secure.waukeshacounty.gov/filelibrary/Files/Variance_and_Appeals.pdf)

<sup>5</sup> Lincoln County Zoning Ordinance, Section 17.8.30(2), available: <http://www.co.lincoln.wi.us/Zoning%20Ordinance%20Final%20clean%20-%20Dec%202004.pdf>;

Waukesha County Board of Adjustment variance and appeal form, available: [https://secure.waukeshacounty.gov/filelibrary/Files/Variance\\_and\\_Appeals.pdf](https://secure.waukeshacounty.gov/filelibrary/Files/Variance_and_Appeals.pdf); and *Administering Township Zoning: A basic guide for citizens and elected officials*, 2<sup>nd</sup> edition, May 1996, Michigan State University Extension, Extension Bulletin E-1408, page 23.

- 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
  - b. Preparer, date of preparation and revisions
  - c. Scale and directional arrow
  - d. Boundaries and dimensions of property for which the permit is sought, and all other lands within a specified distance of the boundaries of the property
  - e. Location and dimensions of all existing and proposed structures on the property in question and adjacent properties, including:
    - i. Building elevations
    - ii. Dimensions, colors, and materials used on all exterior sides of buildings
    - iii. Distances between multiple structures
    - iv. Distance between structures and the ordinary high water mark
    - v. Distances between structures and lot lines
    - vi. Distances between structures and the centerlines of abutting streets and highways
  - f. Soils information
  - g. Topographical contour lines: \_\_ foot intervals
  - h. Wetlands, 100-year floodplain, shoreland zone and ordinary high water mark for any adjacent watercourses
  - i. Easement labels and locations
  - j. Adjacent public streets, centerlines, and rights-of-way
  - k. Auto ingress and egress
  - l. Visual clearance triangles
  - m. Parking and loading areas
  - n. Utilities: existing and proposed locations and types of private well and onsite waste treatment systems, or connections to public sanitary sewer, water, and/or storm sewer.
  - o. Grading and drainage plan, showing existing and proposed surface elevations
  - p. Proposed erosion control and stormwater management provisions
  - q. Any outdoor storage or dumpster areas
  - r. Existing and proposed landscaping on the site, including the location, species, size at time of planting, and mature size of all new plantings
  - s. Signs: location, height, dimensions, colors, materials, lighting, and copy area of all signage
  - t. Lighting: location, height, type, orientation, and power of all proposed exterior lighting
- D. Names and addresses of the owners of all lands within a specified distance 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

## **Figure 11: Example Site Plan from Lenglade County**

<<insert graphic from original handbook here>>

An applicant has the burden of establishing the need for their relief from the zoning ordinance and the zoning board cannot guess or fill in the blanks of an incomplete application. Thus, an applicant fails to provide sufficiently detailed materials at his or her own peril. If the zoning board determines that it does not have sufficient information to make a decision on an application, it may postpone the decision until the applicant supplies the requested information and notice is provided for an additional hearing.

For examples of applications to the zoning board, staff reports, and zoning board decisions, see Appendix D and E.

### **Who reviews the applications?**

Initially, zoning staff members review the application to identify missing or problematic information. They may also ask other specialists, such as engineers or natural resource specialists, to assist in reviewing issues such as erosion control, stormwater management, delineation of ordinary high water marks, floodplains and wetlands, or restoration issues.

### **Are zoning staff reports recommended and what do they contain?**

While Wisconsin Statutes do not specifically address staff reports for the zoning board, the courts have not reacted negatively to staff providing recommendations to the zoning board.<sup>6</sup> Figures 12 and 13 show the results from a 2004 survey completed by 31 counties. Most zoning staff members prepare reports some or all of the time for zoning board members, summarizing the facts regarding applications. About half of the counties who responded said zoning staff always include recommendations about whether standards are met, whether to grant or deny the permit, and appropriate conditions if the permit is granted. When deciding whether to include recommendations in staff reports, consider preferences of the zoning board, staff and zoning board expertise, workload for staff and zoning board members, and political risk.

Staff reports commonly include the following components:

- Summary of applicant's request
- Additional site information from staff visit and/or research
- Zoning history of the site, including previous permits requested and granted
- Relevant statements from comprehensive or land use plan
- Salient purpose statements and provisions from local ordinance
- Relevant statutes and case law
- Discussion of whether proposal meets standards
- Recommendation to approve, approve with conditions, or deny request

See Appendix E for an example of a staff report.

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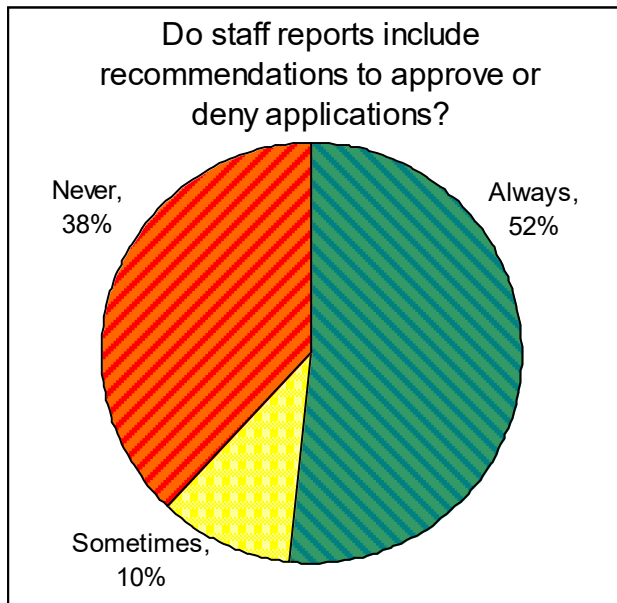
<sup>6</sup> *Miswald v. Waukesha County Bd. of Adjustment*, 202 Wis.2d 401, 550 N.W.2d 434 (Ct. App. 1996)

See Chapter 5 for information about who should be notified about zoning board applications and upcoming hearings.

**Figure 12: Staff Reports**



**Figure 13: Staff Report Recommendations**



## 9. Site Visits

Planning and zoning officials regularly visit sites prior to making decisions in order to verify the accuracy of information submitted as part of a development proposal (rezoning, conditional use, variance, or subdivision); to gather additional information; and to gain a hands-on understanding of the site in question and its context. Through a combination of field notes and photographs/video recordings, they use the site visit to record the uses of the site and surrounding areas, as well as the location and condition of site features such as topography, vegetation, buildings, surface waters, streets, utilities, parking, and circulation patterns. They can then use

this information to identify potential conflicts between the proposed development and neighboring land uses or to identify limitations of the site requiring additional analyses or mitigation.



**Figure 14:** Zoning boards regularly conduct site visits to gain a better understanding of the physical limitations of a property and neighboring uses.

*Photo by Robert Korth, UW-Extension Lakes Program.*

### What equipment is needed for a site inspection?

When conducting a site visit, we recommend you wear appropriate clothing (boots, durable outerwear, and construction hat) and carry:<sup>7</sup>

- Base maps and aerial photos of the site and surrounding area
- A measuring device (preferably on a wheel)
- A notepad and clipboard for taking field notes
- A still camera or video recorder
- Identification as a zoning/inspection staff member or member of a local government body

### Must zoning boards comply with the open meetings law during site inspections?

Zoning boards have several options for conducting site visits related to variances or conditional use permits in light of the open meetings law. If zoning board members visit the site as a group, they must comply with open meetings law requirements, including providing advance public notice of the meeting and allowing the public to access the site. (The purpose of a site visit is to gather information related to making a decision of a governmental body, so both the numbers and purpose test are met as outlined in Chapter 5). If zoning board members visit the site individually, they are not required to comply with the open meetings law. Some zoning boards do not visit the site at all, instead opting to have zoning staff conduct the site inspection. If staff

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<sup>7</sup> Meck, Stuart. "Site Visits: Purpose, Planning and Practice." *Zoning Practice*, 2.05. American Planning Association.

inspect the site, they should take photographs or a video recording of the site and prepare a detailed staff report to share with the zoning board.

**Who may access a property for a site inspection?**

If a site inspection is noticed as a public meeting, members of the public must be allowed to access the site. Before anyone (including zoning staff, zoning boards, or the public) may physically access a property for a site inspection, permission must be obtained in writing from the landowner. Many communities require this as a condition of submitting an application.

## **10. Meetings and Hearings**

You will find information here to guide the zoning board in conducting its meetings and hearings provided in two parts. The first is a checklist that the board chair and members may use to prepare for and conduct meetings and hearings. The second part may be read by the zoning board chair or secretary at the opening of meetings to help petitioners and the public understand the role of the board and the sequence of events at the meeting or hearing.



## **ZONING BOARD HEARING CHECKLIST**

- 1. Prior to a meeting/hearing** [board secretary or designated staff]
  - A. Arrange for alternates (due to anticipated absence or conflict of interest).
  - B. Send the agenda, any applications, and any staff reports to board members.
  - C. Comply with all open meeting law/public notice requirements.
  - D. Arrange for a tape recording (meeting minutes) or a court reporter.
  
- 2. Preliminary matters at meeting**
  - A. Distribute and collect the appearance slips (see appendix).
  - B. Call the meeting to order. [chair]
  - C. Take roll and confirm that a quorum is present. [secretary]
  - D. Confirm compliance with the open meeting law and public notice requirements. [members]
  - E. Read the agenda and amend it as necessary (reorder hearings). [chair & members]
  - F. Inform the public in attendance of hearing procedures (see the following script). [chair]
  
- 3. Public hearings**
  - A. Open the first public hearing. [chair]
  - B. Read the application or appeal. [secretary]
  - C. Report on any site inspection. [secretary]
  - D. Request a statement by the applicant. [chair with questions by board members]
  - E. Read the staff report. [zoning department with questions by board members]
  - F. Report on related correspondence. [secretary]
  - G. Disclose any ex parte communication. [board]
  - H. Request statements of witnesses (pro/con/information). [chair with questions by board]
  - I. Request a response by the applicant (or after each witness). [chair with questions by board]
  - J. Request a response by the zoning department. [chair with questions by board members]
  - K. Ask any final questions. [board members]
  - L. Close the record & the hearing. [chair]
  
- 4. Deliberation and decision** Many zoning boards conduct all hearings before deliberating on decisions.
  - A. Findings of fact (based on ordinance jurisdiction and standards)
    - Determine whether the application contains the information necessary to make a decision.
    - Determine whether the board has the authority to make a decision.
    - Record pertinent facts from the record/hearing on the decision form.
  - B. Conclusions of law
    - Specify applicable legal standards.
    - 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 the zoning administrator to take any necessary action.
  
- 5. Repeat steps 3 and 4 for other hearings.**
- 6. Other agenda items**
- 7. Adjourn meeting**

## **ZONING BOARD ANNOUNCEMENT OF PROCEEDINGS**

### **Role of the Board**

The (county/city/village/town) board of (adjustment/appeals) is an appellate board required by state law in any municipality that has adopted a zoning ordinance. The board does not have authority to amend or repeal any provision of the zoning ordinance. Its authority is limited to appeals regarding interpretations of ordinance provisions, consideration of variances, and (if assigned by ordinance) consideration of conditional use permits. The board functions like a court. Its purpose is to give a full and fair hearing to any person whose property interests are affected by these matters. Its job is to apply the zoning ordinance and appropriate legal standards to the facts of each case. The board meeting and public hearings are open to the public. A taped recording is being made of the proceedings (or a court reporter is recording the proceedings).

### **Expiration and Revocation of Permission to Develop**

Any permission to develop granted by a decision of the board must be authorized by obtaining the necessary building, zoning, and other permits. Construction must be substantially completed within \_\_ months of the date of the board'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 board. The applicant will be given notice of the violation and an opportunity to be heard.

### **Appeal of Board Decisions**

A decision of the board may be appealed by commencing an action in the circuit court for this county within 30 days after the date of filing of the decision in the office of the board. An applicant who commences construction prior to expiration of the appeal period assumes the risk of having the board decision overturned.

### **Order of Events for Hearings**

Each hearing will be opened by reading the application or appeal. The board's site inspection report (if any) will then be read. The applicant/appellant's statement and the zoning department report (if any) will each be followed by related board questions. Witness testimony (from those who have submitted appearance slips and alternating among those in favor, those opposed, and those appearing to provide information) and related board questions are next, followed by responses from the applicant and zoning department and any remaining board questions. If the board has all of the necessary facts, it will close the record, deliberate, and decide the matter in open session before proceeding to the next hearing. Written decisions based on the discussion of the board and evidence in the record will be filed in the office of the board and mailed to the parties involved as soon as practicable. Minutes of board meetings and decisions are available in the Zoning Department.

### **Instructions for Witnesses**

Anyone wishing to speak should complete an appearance slip and deliver it to the board secretary. You must be recognized by the board chair in order to speak. When called upon as a

witness, you will be put under oath (if required by board bylaws). 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 or the source of your information, and
- Whether you favor, oppose, or are only providing information in this matter and your concerns.

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

### **Contested cases**

[Modify the announcement above for hearings conducted as contested cases.]

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).

## 11. Voting and Recording Decisions

When voting and making decisions, zoning board members should keep in mind the ethical and procedural requirements discussed in Chapters 5 and 6, including following the open meetings law, ensuring decision makers are impartial, avoiding or disclosing ex parte communication, and avoiding using a zoning board position for personal gain. With very limited exceptions, decision-making and voting by the zoning board must be conducted in open session.<sup>8</sup>

### How does the zoning board reach a decision?

The board should consider all of the evidence in the record, including the application, evidence gathered on-site and during the hearing, staff reports, photos, sketches, letters, emails, and audio and video tapes. The board determines the credibility of each piece of evidence and decides whether the applicant(s) have shown that they meet all of the legal standards necessary to grant their request. Remember that applicants have the burden to prove to the zoning board that they should receive the requested relief under the applicable standard of law. If at the end of testimony for a given application, the zoning board is unsure what to do or unsure whether the applicant should be granted the requested permit, then the applicant has not met their burden of proof and the zoning board must deny the permit.

### To what extent must zoning board members explain their reasoning for approving or denying an application?

A zoning board may not grant or deny an application by simply restating the statutory or ordinance language that was or was not met. Rather, the board must explain the "grounds" it relied upon to make its decisions: the specific evidence and reasons the application does or does not fit the legal criteria.

It's not sufficient to say "based on the evidence, we feel that there is a hardship and therefore grant the variance." Rather, the zoning board must refer to the specific evidence that either meets or does not meet each of the legal standards for the decision the zoning board is considering. For example, the zoning board might say "the applicant does not meet the 'unique property limitations' test for a

**Figure 15:** Tips to help zoning board decisions survive a court challenge.

1. Ensure all evidence, including on-site observations, is included in the record.
2. If a project has been modified since findings for it were written, make sure that the modifications do not necessitate new or revised findings.
3. Use statutory and case law requirements as guidelines for your findings.
4. Make sure there is a clear logical link articulated between conditions and the impacts of the project.
5. Avoid findings that merely restate the law.
6. Put your findings in clear and understandable language.

Kovacic, Gary A. and Mary L. McMaster. "Drafting Land Use Findings," *Planning Commissioners Journal*, article 598, no date.

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<sup>8</sup> Wis. Stat. § 19.88(1)

variance because the applicant’s property is no smaller than two-thirds of the properties surrounding the lake.”

If a zoning board’s decision is appealed to circuit court, the judge will review the entire record and must be able to follow the reasoning of the board. While the board is not legally required to include reasons in the written decision, they must either be located there or clearly recorded in the transcript of the board proceedings.<sup>9</sup> We recommend using a decision form similar to the example provided in Appendix D to record the findings of fact, conclusions of law (including the board’s reasoning), an order stating what the board has decided, and a notice of appeal rights.

**Figure 16:** Tips for recording zoning board decisions.

1. Zoning boards must determine whether each statutory and ordinance standard is met.
2. Consider requiring applicants to submit proposed decisions or findings of fact as part of the application process or presentation.
3. Distribute decision forms to all zoning board members and ask them to write down whether they feel each standard is met and why (see Appendix D).
4. Individual zoning board members should describe their rationale to other members
5. After discussion, motions should be made and votes taken.

**How many zoning board members must vote to make a decision?**

In 2005, the Wisconsin Legislature changed the voting requirements for zoning boards to try to ensure that landowners and developers are provided with timely and unbiased decisions. As a result, the current voting requirement is that when a quorum is present, a zoning board *may* take action by a **majority** vote of the members present.<sup>10</sup> Because the Legislature used the term “may” in this instance, the zoning board has the ability to adopt provisions in their bylaws requiring a vote by a greater number of members to take action. If the zoning board does not adopt any local provisions on this issue, then if only three members of a five-member zoning board are present, two concurring votes are sufficient to decide an issue such as granting a variance.

**Quorum** – a majority of the total zoning board.

**Should a zoning board rehear or reconsider their decisions?**

Some people who are not satisfied with a decision from the zoning board will ask the board to hear their case multiple times hoping for the answer they desire. The courts provide zoning boards with guidance on this topic. In 1998, the court of appeals upheld a board of appeals rule that prohibits hearings, reconsiderations, and new applications seeking the same relief after a previous denial unless there has been a substantial change of conditions or circumstances since the decision. The court held that the rule served a legitimate purpose because it promotes finality of zoning board decisions and avoids the inefficiency that would result from revisiting the same

<sup>9</sup> *Lamar Central Outdoor, Inc. v. Bd. of Zoning Appeals of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87

<sup>10</sup> Wis. Stat. §§ 59.694(3m) & 62.23(7)(e)3m

issues when there has been no change of circumstances.<sup>11</sup> In an earlier case, the court observed that a zoning board should not reopen or reconsider a proceeding that has been terminated, although there are possible exceptions, such as a mistake, public necessity, or other good cause, such as a significant change in circumstances.<sup>12</sup>

### **What information needs to be in the record?**

Minutes of zoning board meetings and hearings must be kept recording motions, seconds, and how each member voted, including absences and abstentions. Hearings, discussion, and decision making by the zoning board should also be recorded by a tape recorder or stenographer and be understandable so they can be transcribed if a decision is appealed to court. These records need to be preserved and available to the public consistent with the Wisconsin Public Records Law.<sup>13</sup> In addition to the minutes and tape or transcript, the record for a zoning board hearing and decision should include the application; all evidence related to the application (including photos, sketches, letters, emails, audio tapes, and video tapes); minutes; the decision form; and any other information considered in making the decision.

### **How long must records of the zoning board be kept?**

Zoning board records, including meeting minutes and supporting documents submitted to the board must be kept for at least seven years.<sup>14</sup>

### **Who enforces the decisions of the zoning board?**

While the zoning board decides whether to grant or deny specific zoning permits, they do not enforce their decisions.<sup>15</sup> Zoning decisions, including those made by the zoning board, are typically enforced by the zoning administrator or building inspector.<sup>16</sup> In addition, under county zoning an owner of real estate in the district who is affected by an ordinance violation may also sue to enforce the ordinance.<sup>17</sup> Similarly, under zoning by cities, villages, or towns with village powers, any adjacent or neighboring property owner who would be specially damaged may sue to enforce the ordinance.<sup>18</sup>

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<sup>11</sup> *Tateoka v. City of Waukesha Bd. of Zoning Appeals*, 220 Wis. 2d 656, 583 N.W.2d 871 (Ct. App. 1998)

<sup>12</sup> *Goldberg v. Milwaukee Bd. of Zoning Appeals*, 115 Wis. 2d 517, 340 N.W.2d 558 (Ct. App. 1983)

<sup>13</sup> Wis. Stat. § 19.21

<sup>14</sup> Wis. Stat. § 19.21 requires town, city, village or county public records to be kept at least 7 years.

<sup>15</sup> *Forest County v. Goode*, 219 Wis. 2d 654, 579 N.W.2d 715 (1998)

<sup>16</sup> Other people who may enforce the ordinance include the secretary of the zoning agency, or another appropriate person. Wis. Stat. §§ 59.69(2)(bm), 59.69(10)(b), 59.698 & 62.23(8)

<sup>17</sup> Wis. Stat. § 59.69(11)

<sup>18</sup> Wis. Stat. § 62.23(8)

## Section III – Review

### **Keywords**

- Onsite inspection
- Meeting
- Hearing
- Contested case
- Quorum

### **Test your Knowledge**

#### **Chapter 8 – Application Process**

- 1) Why is it recommended to have a complete BOA application on file for all BOA decisions by the first time that notice is given for the final public hearing on the application?
  - a. To avoid creating an incentive for permit seekers to withhold controversial information from their application until during or after the public hearing.
  - b. To provide ample time and opportunity for interested parties to review the complete application, digest the information, and develop their ideas before the hearing, so that they are prepared to discuss all of their concerns.
- 2) Name four items that may be required in a BOA application.
  - a. See list

#### **Chapter 9 – Site Visits**

- 3) When conducting a site visit, what are the options for complying with the open meetings law?
  - a. Visit the site as a group and follow the public notice and accessibility requirements of the open meetings law.
  - b. Visit the site as individuals or send a staff representative and avoid the requirements of the open meetings law.
- 4) Who may go on-site for a site inspection?
  - a. Generally the zoning board or zoning staff, and members of the public if noticed as an open meeting. These persons may access the site only after obtaining permission from the owner.

#### **Chapter 10 – Meetings and Hearings**

- 5) Does your zoning board follow set procedures for conducting meetings and hearings?
  - a. If not, consider the checklist and announcement of proceedings contained on **pages x-xx.**

## Chapter 11 – Voting and Recording Decisions

- 6) May a zoning board go into closed session to vote on a controversial variance application?
  - a. No. This is not one of the exceptions to open meetings listed in section 19.88(1) of Wisconsin Statutes. Also see *State ex rel. Hodge v. Turtle Lake*, 180 Wis.2d 62 (1993)
- 7) How much information and rationale needs to be in the record for a zoning board decision?
  - a. The board must refer to the specific evidence related to each legal standard for the decision so that if their decision is appealed, the circuit court judge can follow their reasoning.
- 8) Should a zoning board rehear its past decisions?
  - a. Generally no. Only if they have made a mistake or if there has been a significant change in circumstances.