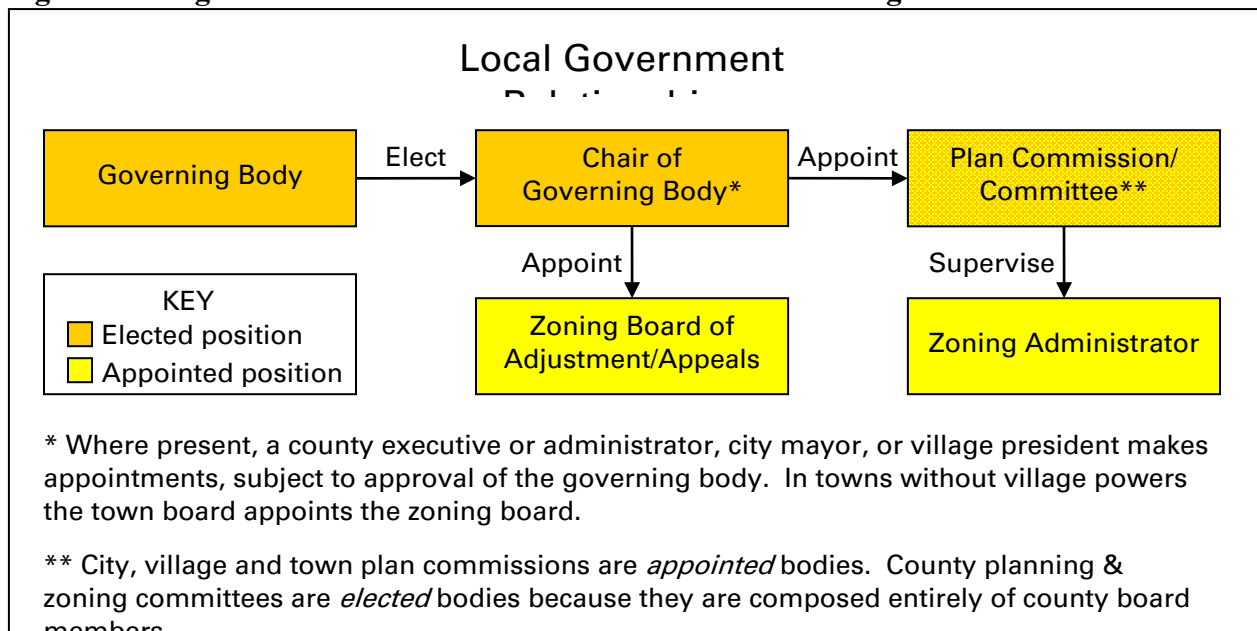


SECTION VI: IMPROVING ZONING DECISIONS

18. Understanding Who the Zoning Board Works With

Zoning boards are most effective when they understand not only their own roles, but also the roles of the groups they work with on a regular basis. By understanding the roles and responsibilities of these groups, the zoning board becomes more effective in its work. Figure 30 illustrates the relationship between local government bodies that are involved in zoning, as defined in Wisconsin Statutes.

Figure 30: Organizational Structure of Bodies Involved in Zoning



Beyond the public sector, zoning boards also have important interactions with local residents, landowners, developers, realtors, builders, attorneys, news reporters, and UW-Extension educators.

Planning and Zoning Staff

Planning and zoning staff are responsible for the day-to-day administration and enforcement of the zoning ordinance. They are responsible for granting permits for permitted uses and providing information to the public about applying for administrative appeals, variances, and conditional uses. Zoning staff play a key role in helping the public understand the rationale behind the ordinances. Planning and zoning staff also work with the zoning board in multiple ways. They are often responsible for preparing staff reports for applications decided by the zoning board, scheduling hearings, providing public notice of hearings, and recording and taking minutes at the hearings.

To enhance the relationship between the zoning board and staff, we recommend that zoning board members consider the following tips:

- The role of staff is to provide support and assistance to help the board be more productive.
- Staff are not mind readers, so let them know what you need and by when.¹
- When considering an appeal of an administrative decision, the zoning administrator or other staff member is an opposing party to the applicant. Therefore, consider staff presentations and evidence side-by-side with that of the applicant.

Planning and Zoning Committee/Commission

The key role of the planning and zoning committee or plan commission is to prepare and recommend plans,² zoning ordinances, and other programs for implementing the plan to the governing body. The governing body is legally responsible for making final decisions. We recommend that the zoning board meet with the plan commission/committee³ annually to discuss potential revisions to the zoning ordinance in order to improve provisions that are unclear, inadequate, overly restrictive, or otherwise problematic.

If assigned by the local zoning ordinance, the plan commission/committee also decides whether to grant conditional use permits. Additionally, they may be charged with overseeing the hiring, training, workload, and personnel matters of planning and zoning staff.

Governing Body (County Board, Town Board, Village Board, City Council)

The governing body adopts and amends plans and zoning ordinances and appoints members to the zoning board. Specifically, the chair, administrator, or executive of the governing body appoints the zoning board subject to the approval of the governing body. Other responsibilities assigned to the governing body include approving the government budget (including a budget for the zoning board), and deciding conditional use permits if assigned by the local zoning ordinance.



Figure 31: Cedarburg Town Board
<http://www.town.cedarburg.wi.us/cedarburg-government.cfm#board>

To achieve community planning goals and adhere to legal standards, the zoning board must sometimes make unpopular decisions. The elected officials on the governing body will eventually hear about these decisions, making it important that they understand land use issues and the rationale of the zoning board. Land use planning initiatives, education about zoning and other plan implementation tools, and discussions about current land use topics can help the governing body gain a sense of confidence in the decisions that the board makes.

¹ Easley, V. Gail and David A Theriaque. *The Board of Adjustment*. 2005. Planners Press, pp. 18-19.

² Including developing: clear community vision and goals; sufficient public education and buy-in; and zoning that complements, and is complemented by, other community tools.

³ We use plan commission/committee in a generic fashion to refer to all of the following planning bodies: plan commissions for cities, villages and towns with village powers; planning committees for towns without village powers; and planning agencies (commonly referred to as planning and/or zoning committees) for counties.

Local Residents

Local residents are valuable resources on the issues affecting their communities. Most residents are heard during public hearings when they appear to support—or more often object to—a proposed variance, conditional use, or administrative appeal.⁴ To optimize public input:

- Provide additional notification beyond the required legal notice about hearings by posting signs and sending letters or postcards to neighbors and other interested parties.
- Provide clear, straightforward application materials that are available to applicants and all local residents.
- Have zoning staff willing and able to explain the zoning procedures, standards, and rationale.
- Require applications to be completed and available to local residents through the zoning office well in advance of a public hearing. This provides time for the public to read, digest, and perhaps further explore the information in the application prior to the hearing, often leading to more well-informed and thoughtful discussion.
- Describe the role of the zoning board at the beginning of each hearing or meeting.
- Make zoning board decisions consistent with the standards.



Figure 32: Residents attend a public hearing.
(Photo by Robert Korth, UW-Extension Lakes Program)

Through participation in public meetings residents offer a range of perspectives and knowledge that can be used to develop stronger decisions.

Developers, Realtors, Builders, and Other Contractors

Developers, realtors, builders, and other contractors represent the private sector side of planning and development. These are the companies and individuals that design, build, and sell subdivisions and other developments based on the codes and regulations that a community has in place. While developers and builders may complain about regulations, they appreciate a place where the process for obtaining permits is streamlined and transparent (there are no hidden costs or requirements), even though that place may be highly regulated.⁵ Realtors, builders, and other contractors often represent the landowner in applying for zoning permits.

Attorneys

⁴ Easley, V. Gail and David A Theriaque. *The Board of Adjustment*. 2005. Planners Press. p. 19.

⁵ Senville, Wayne M. *Welcome to the Commission! A Guide for New Members*. 2000. Champlain Planning Press, Inc., Burlington, VT.

Zoning rests on legal principles, statutes, and codes. While many zoning boards rely on a municipal attorney for legal representation, some zoning boards hire their own attorney who specializes in land use issues. This ensures that the zoning board is working with someone who is up to speed on zoning board issues, will spend adequate time on their current applications, and may provide personalized education for the board. While there is upfront cost for this, a talented land use attorney assisting the zoning board may save the municipality money by avoiding litigation costs.

Applicants who bring lawyers to zoning board meetings may have a different interpretation of statutes or local codes than the zoning board, but this does not mean that the zoning board is wrong. In fact, the Wisconsin Supreme Court has stated repeatedly that the courts may not disturb the decision of a zoning board if any reasonable view of the evidence sustains the decision.⁶ Thus, by making decisions based on the law and keeping a complete record of hearings, zoning boards minimize the likelihood their decisions will be overturned.

News Reporters

The media may attend controversial zoning board hearings. Recognizing that reporters are required to cover a very broad range of issues and work under short timelines, it's best to help them understand the role of the zoning board before a controversial issue arises. Share some, or all, of this handbook with them or invite them to a zoning board training session. Additionally, zoning staff can help reporters understand the issues at hand by providing them with copies of staff reports and applicable ordinances, plans, statutes, and case law, and by taking the time to explain these materials and answer questions. When working with the media, be sure to provide clear graphics and translate your technical language into lay terminology.

Reporters will get information from somewhere, so it might as well be from you or your staff. Working as a team with reporters is the best approach for obtaining accurate press coverage.



Figure 33: St. Croix County planning director, David Fodroczi reviews a land use map with UW-Extension community development educator, Jim Janke.

(Photo by Jim Gill, UW-Extension photo gallery)

UW-Extension Educators

⁶ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401; *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

UW-Extension educators seek to improve the quality of local decisions by providing public, private, and non-profit clients with information, targeted research results, and process support. The UW-Extension Center for Land Use Education offers educational workshops for zoning boards covering the roles and responsibilities of the zoning board and updates on recently adopted laws and court decisions. Upcoming zoning board workshops are listed at <http://www.uwsp.edu/cnr/landcenter/workshopszb.html>

19. Conducting an Annual Self-Audit

Review Zoning Board Decisions

Zoning board members may be tempted to *bend the rules* to fit their view of proper zoning policy if they forget their quasi judicial role in deciding variances, administrative appeals and conditional uses. One way to avoid this temptation is to provide an opportunity for the zoning board to become directly involved in local land use policy development. Because of its unique role, the board has special insight into circumstances in which flexible development standards may be required, where policies concerning nonconforming lots and structures may need reconsideration, or where enforcement or board related procedures require revision.

An annual summary of the number and type of board decisions and related development conditions imposed can guide the board in making recommendations for policy changes. An example of such a report is provided in Appendix D. Look for patterns in the report that suggest opportunities for improving ordinance language clarity, effectiveness of standards, and administrative efficiency.

Communicate with Plan Committee/Commission

We recommend that the zoning board meet annually with zoning staff, the plan commission/committee, or the governing body to discuss concerns or make recommendations related to zoning. In addition, zoning boards may invite plan commission/committee members to attend zoning board meetings to gain an understanding and appreciation for the work of the zoning board. Similarly zoning board members may also consider attending plan commission/committee meetings and meetings of the governing body when zoning issues are on the agenda. You might choose one zoning board member to do this, or rotate the role through the zoning board members so everyone benefits from this experience. Provide a zoning board notice in accordance with the open meetings law if you will have multiple zoning board members at meetings of other bodies. Also ensure that zoning board members do not discuss any current cases.

Review Informational Materials and Forms

Zoning boards rely heavily on written reports, forms, and other materials to make well-informed decisions. Application materials and forms should prompt applicants to submit sufficient information to meet their burden of proof and may ultimately reduce the number of requests that come before a zoning board. Staff reports and decision forms should prompt zoning boards to follow appropriate legal standards and properly record their rationale for making decisions. We recommend that the zoning board work jointly with zoning staff to review and update these important materials on a regular basis:

- **Application materials** should clearly describe the zoning board hearing process, submittal requirements, and decision criteria. Together with guidance from zoning staff, these materials should also help applicants to identify alternative site locations or project designs that comply with ordinance standards.

- **Application forms** should prompt applicants to meet their legal burden of proof. Many jurisdictions supply an example site plan and a sample petition as part of a packet of application materials. The site plan is used to illustrate dimensional standards and other ordinance requirements. Many jurisdictions also require project site photos, which are useful to the board in evaluating a proposal and later to the zoning department in monitoring project compliance.
- **Staff reports** should provide zoning boards with critical information regarding relevant plans, ordinances, restrictions, and site conditions on the property and neighboring properties. Zoning staff, together with zoning boards, should decide whether it is appropriate to prepare staff reports and what to include in them.
- **Decision forms** should prompt findings of fact and conclusions of law by the zoning board. They should also reflect appropriate legal standards (e.g. variance criteria) and specify appeal rights, a permit expiration date, and circumstances that might prompt the board to revisit its decision in the matter.

Examples of materials and forms are provided in Appendix D and E.

Review, Enforcement, and Appeals Procedures

There are many procedural issues related to zoning administration and enforcement that are not specified in state statutes or case law. These may cause undue administrative burdens, frustrate landowners and other interested parties, and potentially provide opportunity for appeal of zoning decisions. We recommend that governing bodies, in consultation with zoning boards or staff, review and adopt necessary rules or ordinances that:

- Provide for adequate notice of decisions of administrative officials to affected parties,
- Limit the time period for appeal of administrative decisions to the zoning board,
- Specify how the filing date of a board decision is determined (which establishes the commencement of the 30-day appeal period),
- Specify circumstances allowing reconsideration of a decided matter, and
- Specify how after-the-fact applications will be treated.

Review Rules for Conduct of Meetings and Hearings

To avoid similar issues related to zoning board meetings and hearings, we recommend that local communities adopt necessary rules, ordinances, or materials that:

- Provide proper notice for meetings, hearings and closed sessions;
- Describe how site inspections will comply with open meetings law requirements;
- Identify and address bias and conflicts of interest;
- Provide for appointment and education of alternate board members;
- Determine admissibility of written testimony; and
- Provide instructions for those providing testimony in order to promote hearings that are orderly, fair, and efficient.

Review Need for Counsel

Generally, the municipal attorney provides legal representation for the governing body of the local unit of government. However, as land use issues become increasingly complex, case loads increase, and applicants regularly hire their own attorneys, more zoning boards are opting to retain independent legal counsel with expertise in land use or zoning issues. These zoning boards find that it is worthwhile to spend money upfront in exchange for avoiding potential litigation—and the time, money and headaches associated with it! Many communities who opt for this approach retain an attorney from outside of the area to avoid someone who represents local property owners.

Since a zoning officer or the planning commission/committee may contest any zoning board decision, and a municipal attorney may not represent more than one body within a local government in the same case,⁷ the zoning board should anticipate needing their own attorney and have this provided for in local rules, policies, and budgets. We recommend that zoning boards meet with the appropriate standing committee or governing body to discuss issues such as when the zoning board may retain independent legal counsel and how counsel will be selected and compensated.

Take Advantage of Opportunities for Continuing Education

Zoning boards should regularly assess their needs for ongoing education. Local zoning staff may be able to provide zoning boards with updates to local ordinances, statutes, and case law. Training may also be provided by other groups such as the University of Wisconsin-Cooperative Extension. For example, the Center for Land Use Education regularly provides training for zoning boards, including updates to state statutes and case law. The Local Government Center provides training on topics such as Wisconsin's open meeting law, public records law, and code of ethics. County-based Extension educators may also be available to assist with these or other topics.

Scheduling periodic educational or working sessions also provides a good opportunity for zoning boards to work through and discuss the impacts of development scenarios outside of the pressures of a formal decision-making process. (However, zoning boards must be careful not to discuss current or pending development decisions outside of an open meeting). These types of opportunities may also allow zoning board members to become more comfortable with fellow board members and staff.

⁷ *Nova Services v. Village of Saukville*, 211 Wis.2d 691, 565 N.W.2d 283 (Ct. App. 1997)

20. Translating Zoning Board Decisions into Better Zoning Ordinances

Ordinances are not carved on stone tablets—and that’s not just because Wisconsin is the nation’s leading paper producer! Since it’s impossible to foresee all future changes and how the ordinance will apply to these situations, zoning ordinances should be working documents that are modified as needs arise. We recommend updating the zoning ordinance every few years to:

- Incorporate changes in standards or administration that improve ordinance clarity or efficiency based on the practical knowledge you’ve gained from working with the ordinance,
- Plan for or respond to new uses or development patterns, and
- Maintain consistency with any changes to your community comprehensive plan.

Through experience interpreting a ordinance and applying it to specific fact situations, zoning boards often develop useful ideas about improving the ordinance. We recommend they share these ideas with the plan commission as described below.

How can the zoning board and plan committee/commission work together to improve the local zoning ordinance?

Ultimately, the decision to amend a zoning ordinance is made by the local governing body, based on a recommendation from the plan commission. Following their annual self-audit, we recommend that the zoning board meet with the plan commission/committee to discuss their experience applying the ordinance to specific situations and other findings. Specifically, the zoning board may suggest the plan commission/committee revise the zoning ordinance in the following ways:

- **Clarify terminology.** Definitions may need to be added or clarified. Clarify ordinance definitions and text based on recent administrative appeals.
- **Recommend effective design or performance standards.** See the discussion of the advantages and disadvantages of each in Chapter 14.
- **Recommend appropriate levels of permit review.** If the zoning board has developed a set of conditions that they apply routinely to specific conditional uses that result in effective control, they may recommend including these conditions in the ordinance as requirements of the conditional use. Conversely, if a certain type of permitted use is proving problematic, they may recommend adding requirements to the ordinance or converting the permitted use to a conditional use, so that additional conditions may be applied to mitigate adverse impacts.
- **Ensure enforceability.** Provide clear directions about how measurements such as setbacks, heights, and floor areas are to be made and ensure adequate staffing and staff training. Encourage the planning commission/committee to adopt an enforcement policy if none exists.

If zoning board members want to go beyond the points outlined above and make more major changes to the

*If you want to change the law –
get elected!*

zoning ordinance, we recommend they participate in an advisory group for ordinance revision or run for a position on the local governing body.

Section VI – Review

Keywords

Self-audit

Test Your Knowledge

Chapter 18 - Understanding Who the Zoning Board Works With

- 1) Name five of the eight groups that zoning boards regularly work with.
 - a. Planning and zoning staff,
 - b. Plan commission/committee,
 - c. Governing body,
 - d. Residents,
 - e. Development community,
 - f. Attorneys,
 - g. News reporters, and
 - h. UW-Extension.
- 2) Which local government body has the power to change the zoning ordinance?
 - a. The governing body (county board, town board, village board, city council)
- 3) Describe three ways that zoning staff can help the zoning board.
 - a. By providing information about applying for administrative appeals, variances, and conditional uses;
 - b. By helping the public understand the rationale behind the ordinances;
 - c. By preparing staff reports for the applications decided by the zoning board;
 - d. By scheduling hearings;
 - e. By providing public notice of hearings; and
 - f. By recording and taking minutes at the hearings.
- 4) Describe two ways to optimize public participation at a zoning board hearing.
 - a. By providing public notice of hearings as required by state law;
 - b. By providing clear, straight forward application materials that are available to applicants and all local residents;
 - c. By encouraging zoning staff to explain zoning procedures, standards, and rationale;
 - d. By requiring applications to be completed and available to local residents through the zoning office in advance of the public hearing;
 - e. By describing the role of the zoning board at the beginning of each hearing or meeting; and
 - f. By make zoning board decisions consistent with the standards.

Chapter 19 – Conducting an Annual Self-Audit

- 5) What should be included in an annual self-audit?

- a. Decisions, procedures, forms, rules of conduct, need for counsel, and opportunities for continuing education. Any issues or needs that arise should be clearly communicated with zoning staff, the plan commission/committee, and/or the governing body, as appropriate.
- 6) Who is available to provide continuing education for zoning boards?
 - b. First, check with your local planning and zoning staff. They can often provide updates regarding local development issues, ordinances, and even relevant case law or statutory updates.
 - c. Next, contact your local Extension office. They may be able to offer training or put you in contact with the Center for Land Use Education or Local Government Center, depending on your needs.

Chapter 20 – Translating Zoning Board Decisions into Better Zoning Ordinances

- 7) How often should zoning ordinances be updated?
 - d. Every few years.
- 8) Who has the authority to change or amend the zoning ordinance?
 - e. The governing body, with recommendations from the plan committee/commission
- 9) If a zoning board member wants to change the ordinance, what should they do?
 - f. Meet with the plan committee/commission to discuss potential changes, participate in an advisory group for ordinance revision, or run for office on the governing body.