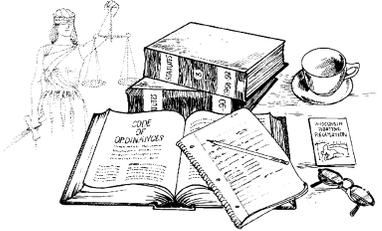


**Workshop for Local Planning  
and Zoning Officials**



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



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**Workshop Outline**

Part 1

- Role of the Zoning Board of Appeals
  - ✓ Administrative appeals
  - ✓ Variances

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**What is Zoning?**

Zoning is one tool to achieve community goals such as:

- Public health, safety and welfare
- Natural resource protection
- Protection of individual and community investments



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### What is Zoning?

- Zoning operates on 2 scales:
  - Landscape scale:**
    - Minimize land use conflicts and encourage cooperation
    - Encourage mixed use between compatible uses




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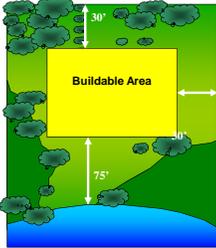
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### What is Zoning?

- Zoning operates on 2 scales:
  - Parcel scale:**
    - Density of development including lot sizes
    - Size and location of buildings on parcel
      - Setbacks
      - Floor area ratios
      - Building height standards




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### Zoning – Allowable Uses

- Permitted Use** – a use that is listed and allowed by right in all parts of a zoning district (granted by zoning administrator)
- Conditional Use** – a use that is listed for a district and may be allowed if suited to the location (decided by plan commission, zoning board or governing body)
- Unlisted or Prohibited Use** – a use that is expressly prohibited or not listed for the district is not allowed




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### Zoning – Relief Mechanisms

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

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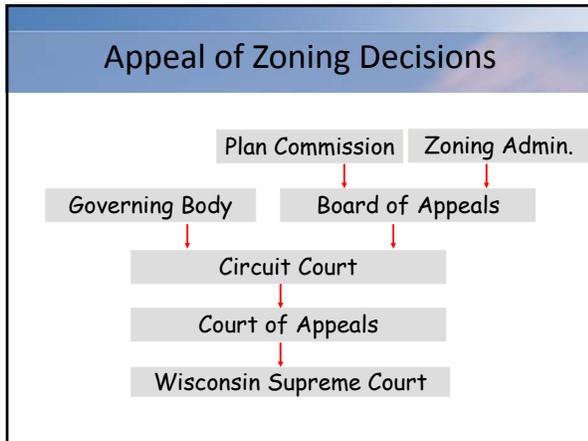
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### From Wisconsin Statutes...

Section 62.23(7)(e)7-8  
*The board of appeals shall have the following powers:*

To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto...

[The] board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.

- The zoning board has all the powers of the zoning administrator and plan commission and may reverse, affirm or modify their decision.
- It does not have authority to remand a decision to the plan commission.

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**Administrative Appeals**

- Appeal of a decision by the zoning administrator or plan commission
- Legal process to resolve disputes regarding:
  - Reasonableness of a zoning decision (i.e. land use permit, conditional use permit)
  - Ordinance interpretation (i.e. text, maps, jurisdiction, measurements, etc.)

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**Administrative Appeals**

Procedure for appeal:

- Any aggrieved party, or any officer, board or department of the municipality may file an appeal
- Notice of appeal filed with administrative officer and zoning board (specify time limit in ordinance)
- Action stayed
- Zoning board provided with a record of the decision
- Public notice and hearing




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**Administrative Appeals**

Role of the Zoning Board:

- The board functions like a court
- Its job is to apply the zoning ordinance and appropriate legal standards to the facts of each case
- The board *does not* have authority to amend or repeal any provision of the zoning ordinance

The applicant has the burden of proof to show that the ZA/PC's decision was incorrect or unreasonable

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**Administrative Appeals**

- When the Zoning Board hears appeals, they have the authority to:
  - Review the record/decisionOR
  - Conduct a de novo hearing,
  - Take new evidence, and
  - Substitute their judgment for the plan commission or zoning administrator’s judgment

*Osterhues v. Board of Adjustment for Washburn County, 2005 WI Supreme Ct.*

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**Decision Standards**  
**When Reviewing the Record**

1. Was the decision made by the correct person/body according to the zoning ordinance? Does the ordinance allow for the decision made?
2. Were proper procedures followed?
3. Were the proper standards from the ordinance used?
4. Is there evidence in the record supporting the decision reached? The zoning board may take additional evidence. Is there evidence that is new and relevant to ordinance standards?

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**Ordinance Interpretation**

Analyzing the ordinance:

- Determine if ordinance language is ambiguous
- Rely on ordinance definitions first, dictionary definitions next
- Review purpose statement for ordinance intent
- Interpret to avoid conflicting language
- Give effect to all provisions

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**Ordinance Interpretation**

Interpreting evidence beyond the ordinance:

- Examine administrative history
- Rely on documented evidence of intent
- Determine objectivity of testimony and interpretations

Keep records of interpretations and recommend clarifying ordinance amendments

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**Checklist for Appeals**

1. What are the facts of the situation?
2. Did the ZA/PC have the authority to make the decision?
3. What decision standards were used? Are those the correct standards? Were they applied correctly?
4. What does the appealed provision mean? Review definitions from: a) ordinance, b) dictionary.
5. What is the purpose of the ordinance? Review purpose statement from a) ordinance, b) past meeting minutes.
6. How were measurements made? Were they consistent with the ordinance?

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**Appeal of Zoning Board Decisions**

Board of Appeals

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Circuit Court

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Court of Appeals

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Wisconsin Supreme Court

Any aggrieved party, **taxpayer**, officer, department, board or bureau of the municipality may file an appeal within **30 days** of the zoning board's decision.

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### Standards on Judicial Review

Courts generally defer to local decisions when these tests are met:

1. Subject matter jurisdiction  
Did the body decide a matter that it is empowered by statute or ordinance to act on?
2. Proper procedures  
Did the body follow proper procedures (notice, hearing, record of decision, open meeting law)?
3. Proper standards  
Did the body apply proper standards in making the decision (e.g. 3-step test for a variance)?
4. Rational basis for the decision  
Could a reasonable person have reached this conclusion?
5. Evidence in the record  
Do facts in the record of the proceedings support the decision?

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### Case law

- Washburn County applied for a CUP to operate a gravel pit
- County zoning committee granted the permit over the opposition of neighbors
- Osterhues appealed to the Zoning Board



*Osterhues v. Board of Adjustment for Washburn County, 2005 WI Supreme Ct.*

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### Case law

How should the board proceed?



Fact finding hearing?
Error finding hearing?

*Osterhues v. Board of Adjustment for Washburn County, 2005 WI Supreme Ct.*

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**Case law**

When BOAs hear appeals, they have the authority to:

- Conduct a de novo hearing, and
- Review the record by the PC/ZC, and
- Take new evidence, and
- Substitute their judgment for the zoning committee or zoning administrator's judgment

**WARNING**  
BOA may have to defend its action on an incomplete record if challenged

*Osterhues v. Board of Adjustment for Washburn County, 2005 WI Supreme Ct.*

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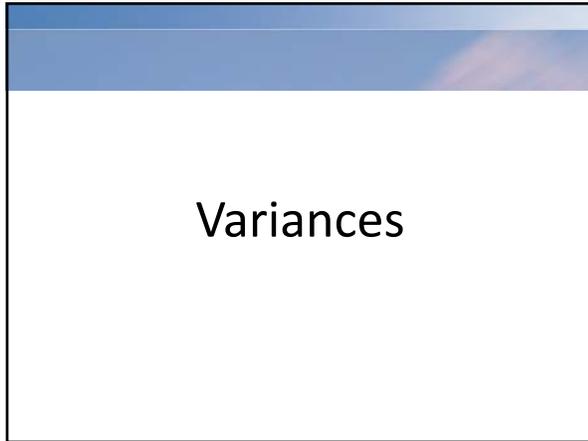
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Variances

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From Wisconsin Statutes...

Section 62.23(7)(e)7  
The board of appeals shall have the following powers:

To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

[Effective April 5, 2012] The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, ...[the variance] runs with the land.

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**Variance**

- A relaxation of a zoning ordinance standard (an allowed violation).
- Meant to be an infrequent remedy where the ordinance imposes a unique and substantial burden.
- Applicant must meet specific criteria laid out in state statutes and case law.
- Decided by the Zoning Board of Appeals.

See Zoning Board Handbook, Chapter 15: Variances

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**2 Types of Variances**

Use **variances** “permit a landowner to put property to an otherwise prohibited use.”  
 → **Ordinance may prohibit**

**Area variances** “provide an increment of relief (normally small) from a physical dimensional restriction such as a building height, setback, and so forth.”

Ziervogel v. Washington County Board of Adjustment, 2004 WI Supreme Ct.

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**Variance Standards**

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. no harm to public interests

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### Unique Property Limitations Test

- Physical limitations (i.e. steep slopes, wetlands) that are unique to the property must prevent compliance with the ordinance.
- Circumstances of an applicant (i.e. growing family, need for a larger garage) are not a factor in deciding variances.
- Limitations common to a number of properties should be addressed by ordinance amendment.




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### Public Interest Test

- “Public interests” are the purpose and intent of the ordinance that were agreed upon by the governing body, representing the community.  
*(Witnesses may try to convince you of other public interests)*
- A variance granted may not harm public interests but is not required to advance them.
- An impact analysis can help you determine short-term, long-term and cumulative impacts.




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### Unnecessary Hardship Test

- Use Variance** – no reasonable use of the property without a variance
- Area Variance** – 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




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**Is the hardship...**

A personal inconvenience?  
A hardship that is necessary to achieve the ordinance purposes?



OR - Could you grant the variance while still upholding the ordinance purposes?

If yes to either question, deny the area variance.

If yes, and 2 other standards are met, grant the variance.

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**Unnecessary Hardship Test**

- Loss of profit or financial difficulty do not constitute hardship
- Hardship cannot be self-created or created by a prior owner
- A zoning board may consider an error of local government staff when deciding whether to grant a variance

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**Variations**

- A variance runs with the property.
- A variance does not create a nonconforming structure.
- Lack of objections from neighbors does not justify a variance.
- Nor do nearby ordinance violations.

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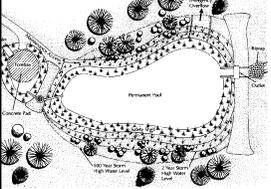
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### Conditions May be Attached



Conditions must meet 2 tests:

- 1) **Essential nexus** – address expected harmful project impacts
- 2) **Rough proportionality** – be proportional to the extent of those impacts

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### Case law

#### Ziervogel and Area Variances...

- House located 26 feet from the OHWM of Big Cedar Lake in Washington County
- Owners wanted a 10-foot vertical expansion of their house to add two bedrooms, two bathrooms, and an office to the house
- Washington County's Ordinance prohibited expanding any structure within 50 feet of the OHWM of a lake



- Washington County BOA denied variance request
- Circuit Court & Court of Appeals affirmed
- Supreme Court changed standard

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### Case law

#### Unnecessary hardship test for area variances...

- Unnecessary hardship = 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

*Ziervogel v. Washington County Board of Adjustment, 2004 WI Supreme Ct.*

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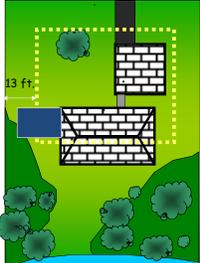
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**Case law**

### What does "unnecessarily burdensome" mean??



- Should an after-the-fact variance be granted for the red porch because its removal would be "unnecessarily burdensome"?
- 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 Zoning Board, 1976*

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**Case law**

### Unnecessary hardship

- Building inspector missed a setback violation for 2 duplexes
- The duplexes were built and the developer then applied for an after-the-fact variance, which the zoning board granted
- Hardship cannot be self-created or created by a prior owner

*Accent Developers, LLC v. City of Menomonie BOA and Timber Ridge Homes LLC, 2007 WI Court of Appeals*

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**Case law**

### Unnecessary hardship

- The court noted there was ample evidence of external causes of the hardship and affirmed BOA's grant of a variance because the hardship of removing the duplexes was not solely self-created
- A zoning board may consider an error of local government staff when deciding whether to grant a variance

*Accent Developers, LLC v. City of Menomonie BOA and Timber Ridge Homes LLC, 2007 WI Court of Appeals*

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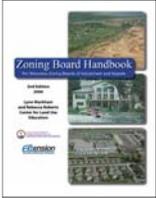
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**Recommended Resource**

**Zoning Board Handbook (CLUE, 2006)**

- I. Introduction
- II. Zoning Board Basics
- III. Laws that Apply to the Zoning Board
- IV. Zoning Board Decision Process
- V. Appeal of Zoning Board Decisions
- VI. Improving Zoning Board Decisions
- VI. Shoreland and Floodplain Zoning

Plus legal resources and sample forms



[www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/Zoning.aspx](http://www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/Zoning.aspx)

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**Workshop Outline**

**Part 2**

- Procedural Responsibilities
  - ✓ Legislative vs. quasi-judicial decision-makers
  - ✓ Making fair and impartial decisions
  - ✓ Handling communication outside of meetings
  - ✓ Knowing when to abstain or recuse

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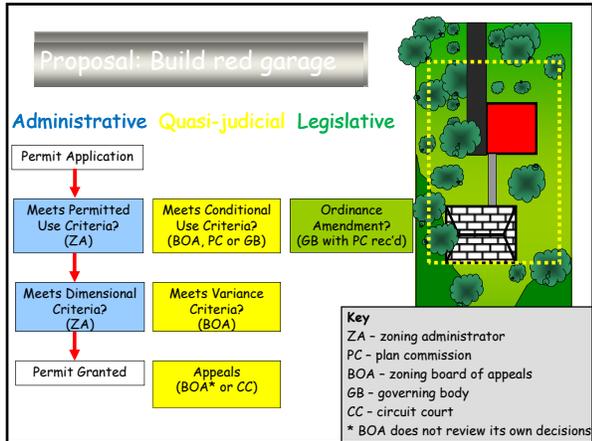
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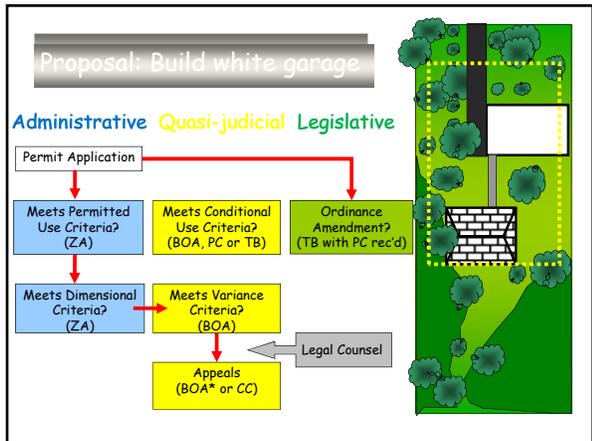
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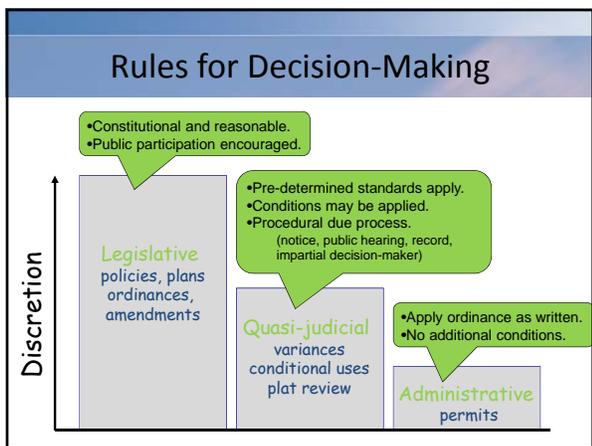
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### Impartial Decision-Makers

**Statutory Conflicts of Interest**  
*(Wis. Stat. s 19.59 and s. 946.13)*

- A local official cannot use a public position for the private benefit or financial gain of:
  - the individual
  - immediate family members
  - organizations they are associated with

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### Impartial Decision-Makers

**Bias of Local Officials**  
*(Keen v. Dane County, 2004 WI App 26)*

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




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### Impartial Decision-Makers

**Biased??**

**Decision maker #1** Advocate  
Risk of bias too high

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

**Decision maker #2** Prior, independent  
business transaction

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

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**Impartial Decision-Makers**

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

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

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**Impartial Decision-Makers**

- “Recuse”** yourself from decisions that present a conflict of interest or bias (or appearance of bias)
  - Not the same as abstaining (not voting)
  - Do not participate in decision or discussion leading up to decision
  - Physically separate yourself from the decision-making body
  - If you need to provide testimony, do so as a member of the audience

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**Impartial Decision-Makers**

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

- Quasi-judicial decision-makers should...
  - avoid it,
  - disclose it, and
  - encourage citizens to make important information part of the public record.

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### Bylaws / Rules of Procedure

- Used to address procedural issues not otherwise addressed by state statutes, local ordinances, or case law
- For example:
  - Appointment of alternates or non-voting members
  - Quorum, if other than ½ of members
  - Rules for handling ex parte communication, conflicts of interest, gifts, etc.
  - Expectations regarding attendance and voting
  - Grounds for removal

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### Recommended Resource

- Sample rules of procedure

**Plan Commission Rules of Procedure**

**SECTION I AUTHORITY AND PURPOSE**

The following rules of procedure are hereby adopted by the City/Village/Town/County of \_\_\_\_\_ Plan Commission. The Plan Commission has been established pursuant to Section \_\_\_\_\_ of the Wisconsin Statutes and Section \_\_\_\_\_ of the City/Village/Town/County of \_\_\_\_\_ Ordinance, and assumes thereby, all responsibilities, duties and powers as provided therein. These rules supplement the provisions of state statutes and local ordinances as they relate to the procedures of the Plan Commission.

**SECTION II MEMBERSHIP**

A. **Selection of Members.** Members of the Commission are appointed by the Mayor/Village President/Town Board Chair/County Board Chair with input from the Governing Body and Plan Commission. The following criteria will be considered when selecting members. [Examples follow]

1. Geographic or jurisdictional diversity
2. Demographic diversity
3. Planning skills or expertise
4. Interpersonal and decision-making skills
5. Commitment to community service

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### Recording Decisions

- Back to the gravel pit case in Dane County...
- Local ordinance listed 10 factors to consider when deciding a CUP
  - Purposes of zoning district
  - Availability of alternative locations
  - Compatibility with existing or permitted use on adjacent lands...



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

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**Recording Decisions**

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

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

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**Recording Decisions**

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



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

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**Quasi-Judicial Decisions**

- Decision-makers must express, on the record:
  1. Criteria under which the application is decided  
*Keen v. Dane County, 2004 WI App 26*
  2. Reasons the criteria are or are not satisfied  
*Lamar v. Milwaukee BOA, 2005 WI 117*

Reasons should appear *somewhere* in the public record (i.e. minutes, transcript, recording, etc.).  
If appealed, a judge will review the record and must be able to follow your rationale.

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### Recording Decisions

- Which motion would you prefer?
  1. I move we recommend denial.
  2. I move we recommend denial because the petitioner did not meet the standards.
  3. I move we recommend denial because this guy isn't from here and we don't know him.
  4. I move we recommend denial because the petitioner failed to show increased traffic will not create a pedestrian hazard.

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### *Good decisions start with complete applications*

Application forms should prompt:

- Contact information
- Property description
- Current conditions
- Maps, photos, scale drawings
- Compliance with ordinance standards

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### Recommended Resource

- Sample guides, checklists and forms

The collage shows three documents: a 'Sample Development Guide' with zoning regulations, a 'Sample Pre-Application Checklist' with a table of items to check, and a 'Sample Application Form' for a 'Subdivision / Land Division / Developer's Agreement Application' with fields for applicant and property information.

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**Use prompts to guide your decision**

Decision forms should prompt:

- Facts of the case
- Compliance with ordinance standards
- Recommendation or decision
- Rationale
- Related conditions or limitations

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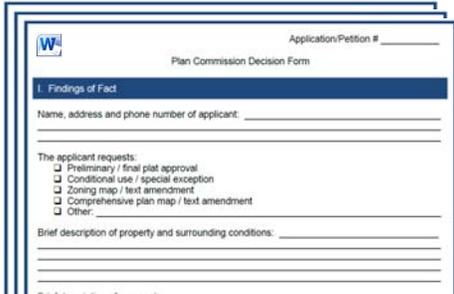
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**Recommended Resource**

- Sample decision forms



The image shows a sample 'Plan Commission Decision Form' with a 'W' logo. It includes fields for 'Application/Petition #', 'Name, address and phone number of applicant', 'The applicant requests:' (with checkboxes for Preliminary / final plat approval, Conditional use / special exception, Zoning map / text amendment, Comprehensive plan map / text amendment, and Other), and 'Brief description of property and surrounding conditions:'.

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**Findings of Fact**

**I. Findings of Fact**

Name, address and phone number of applicant: \_\_\_\_\_

The applicant requests:

- Preliminary / final plat approval
- Conditional use / special exception
- Zoning map / text amendment
- Comprehensive plan map / text amendment
- Other: \_\_\_\_\_

Brief description of property and surrounding conditions: \_\_\_\_\_

Brief description of proposal: \_\_\_\_\_



Describe proposal and surrounding conditions

Attach or reference maps, photos, and other materials

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### Conclusions of Law

**II. Conclusions of Law**

- The proposed use conforms with the purposes of the zoning district in which it is located.
- The proposed use will not be detrimental to the use or enjoyment of other property in the immediate vicinity or to the community as a whole.
- The proposed use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the surrounding area.
- The proposed use will be adequately served by essential public facilities and services, including highways, streets, water, sewage, drainage, schools and emergency services.
- Adequate measures have or will be taken to prevent or control noise, odors, fumes, dust, vibrations, light, and other unusual activities or disturbances.
- Adequate measures have or will be taken to provide sufficient off-street parking and loading spaces to serve the proposed use.

Describe reasons why proposal does or does not meet each standard.

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Modify based on standards found in your ordinance!!

Provide specific justification for standards

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### Order and Determination

**III. Recommendation or Decision**

On the basis of the above findings of fact, conclusions of law and the record in this matter, the plan commission recommends / finds that the proposed development is:

- Approved, subject to the following conditions.
- Tabled for further consideration.
- Denied for the following reasons.

Specify conditions of approval, additional information requested, or reasons for denial:

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Signed \_\_\_\_\_ Attest \_\_\_\_\_  
 Chairperson Secretary

Dated: \_\_\_\_\_

Filed: \_\_\_\_\_

Decision and conditions of approval

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### A checklist for good decisions

Courts defer to local decision-makers when these test are met:

- ✓ Subject matter jurisdiction  
Did the commission/board decide a matter that it is empowered by statute or ordinance to act on?
- ✓ Proper procedures  
Did the commission/board follow proper procedures (notice, hearing, record of decision, open meeting law)?
- ✓ Proper standards  
Did the commission/board apply proper standards in making the decision (e.g. 3-step test for a variance)?
- ✓ Rational basis for the decision  
Could a reasonable person have reached this conclusion?
- ✓ Evidence in the record  
Do facts in the record of the proceedings support the decision?

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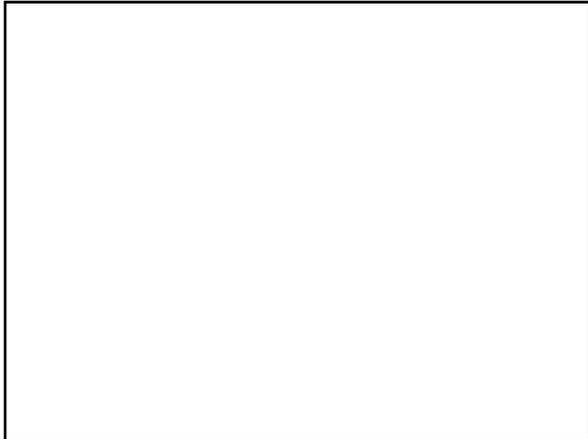
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### Workshop Outline

Part 3

- Role of the Plan Commission
  - ✓ Reviewing conditional uses and developing conditions
  - ✓ Criteria for considering rezones
  - ✓ Avoiding spot zoning
  - ✓ Updating plans and ordinances

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### Zoning

A zoning ordinance contains 2 parts:

**Map** – divides the community into districts (i.e. residential, commercial, conservancy)

**Text** – describes allowable uses and dimensional restrictions (i.e. lot size, density, setbacks)



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### Zoning – Allowable Uses

1. **Permitted Use** – a use that is listed and allowed by right in all parts of a zoning district (granted by zoning administrator)
2. **Conditional Use** – a use that is listed for a district and may be allowed if suited to the location (decided by plan commission, zoning board or governing body)
3. **Unlisted or Prohibited Use** – a use that is expressly prohibited or not listed for the district is not allowed

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### Conditional Use



- Discretionary decision – may be granted or denied
- Must be listed for the zoning district
- Decision criteria also listed in the ordinance
- Conditions may be attached

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### Conditional Uses

- Permit generally assigned to property, not owner
- Conditions cannot be changed unless permit is revoked or expires
  - Permit may be revoked due to non-compliance
  - Expiration date appropriate for temporary uses such as gravel pit
- In the case of a zoning change, property becomes nonconforming and conditions cannot be enforced  
(Hussein v. Germantown BOA, 2011 WI Court of Appeals)

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### Attaching and Tracking Conditions

- Options for developing conditions:
  - Zoning staff develops generic list of conditions based on common permit requests/situations
  - Zoning staff recommends conditions specific to permit request as part of staff report
  - PC/GB/BOA develops conditions specific to permit request at close of public hearing
  - Some combination of the above

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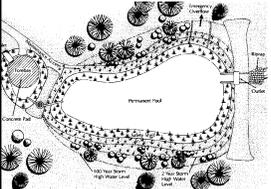
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### Attaching and Tracking Conditions



Conditions must meet 2 tests:

- 1) **Essential nexus** – address expected harmful project impacts
- 2) **Rough proportionality** – be proportional to the extent of those impacts

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### Attaching and Tracking Conditions

- Options for ensuring compliance:
  - Conditions recorded on deed
  - Compliance reporting by owner as condition of permit (required on periodic basis or upon sale of property)
  - Zoning staff maintains database and periodically checks for enforcement
  - Cash or surety bond for projects involving significant capital outlay (i.e. mitigation, construction, etc.)
  - Do nothing -- wait for complaints!*

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### Zoning Amendments

Two types:

**Map amendment** – change to district boundaries  
 “Rezoning” – usually refers to 1 property

**Text amendment** – change to district regulations (i.e. allowable uses, setbacks, etc.)





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### Zoning Amendments

- Adopted by the governing body with advisory recommendation from plan commission

Legislative decision

- Elected decision-makers have wide discretion
- Must be reasonable and constitutional
- Consistent with comprehensive plan

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### Suggested Rezoning Criteria

- **Consistent with the comprehensive plan** – Review against the future land use map and supporting text.
- **Supports a public purpose** – Review purpose statements in the comprehensive plan and zoning ordinance.
- **Compatible with adjacent uses** – Review for potential conflicts with surroundings such as noise, aesthetics, lighting, litter, stormwater runoff, erosion, etc.
- **Meets criteria for proposed district** – Review for soil suitability, septic suitability, environmental concerns, proximity to wetlands and adjacent waters, etc.

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### Example: Dodge County

**2.3.4.1 Approval Criteria**  
In acting on a rezoning petition, the County Board of Supervisors shall consider the stated purpose of the proposed zoning district and shall approve the rezoning petition only if it finds that:

**2.3.4.1.1 Adequate public facilities and services** (including sewage and waste disposal, water, gas, electricity, schools, police and fire protection, and roads and transportation, as applicable) will be available to serve the subject property while maintaining adequate levels of service to existing development;

**2.3.4.1.2** Provision of public facilities to accommodate development will not place an unreasonable burden on the ability of affected local units of government to provide them;

**2.3.4.1.3** The proposed development will not result in significant adverse impacts upon surrounding properties or the natural environment, including air, water, noise, stormwater management, soils, wildlife, and vegetation;

**2.3.4.1.4** The land proposed for rezoning is suitable for development and will not cause unreasonable soil erosion or have an unreasonable adverse effect on rare or irreplaceable natural areas;

**2.3.4.1.5** The proposed rezoning is consistent with the Dodge County Comprehensive Plan and the stated purposes of this Code;

**2.3.4.1.6** The proposed rezoning will not be used to legitimize, or "spot zone," a nonconforming use or structure;

**2.3.4.1.7** The proposed rezoning is the minimum action necessary to accomplish the intent of the petition, and an administrative adjustment, variance, or Conditional Use Permit could not be used to achieve the same result;

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### Example: Town of Harrison

**Standards for Map Amendments (Rezoning).** All recommendations for Official Zoning Map amendments shall be consistent with the adopted plans, goals and policies of the Harrison Comprehensive Plan and with the intent of this Chapter.

- Prior to making a recommendation on a proposed rezoning, the Plan Commission shall make a finding to determine if the following conditions exist. No rezoning of land shall be approved prior to finding at least one (1) of the following:
  - The request for a zone change is in conformance with the Harrison Comprehensive Plan;
  - A study submitted by the applicant that indicates that there has been an increase in the demand for land in the requested zoning district, and as a result, the supply of land within the Town mapped as such on the Official Zoning Map, is inadequate to meet the demands for such development.
  - Proposed amendments cannot be accommodated by sites already zoned in the Town/Village due to lack of transportation, utilities or other development constraints, or the market to be served by the proposed use cannot be effectively served by the location of the existing zoning district(s).
  - There is an error in the code text or zoning map as enacted.
- Any proposed rezoning not consistent with the Harrison Comprehensive Plan shall require a Future Land Use Map amendment and shall follow the process for amending the Comprehensive Plan prior to rezoning approval.

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### Spot Zoning

- Rezoning a single lot or area to allow a use or other privilege that is not extended to similarly situated properties in the surrounding area.




(Cushman v. City of Racine, WI Supreme Court, 1968)

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### Spot Zoning – legal or not?

- Not necessarily illegal
- Difficult to prove in courts
- Local government decisions are presumed valid
- Things to watch for:
  - The rezone favors one property owner above others
  - There is no public purpose or benefit
  - The use is incompatible with surrounding properties
  - The rezone is not consistent with the comprehensive plan

*Would you grant the rezone to other similarly situated properties?  
Consider all potential uses, not just this property owner or proposal.*

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### Best Practices

- Evaluate each request on its own merits
- Document your *rationale* for the rezone
  - Public purpose or benefits
  - Consistent with comprehensive plan
  - Etc.
- If proposed rezone is not consistent with the plan, deny the proposal or amend the plan *before* granting the rezone

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### Consistency Review

- Beginning Jan. 1, 2010, *new or amended zoning, land division and official mapping ordinances* must be consistent with the comprehensive plan
- *Consistent means* “furthers or does not contradict the objectives, goals and policies contained in the comprehensive plan”  
(2009 Wisconsin Act 372)

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### Future Land Use Map

Example: Village of Mount Horeb

Plan specifies conditions under which growth may occur:

*“development of this area is conditioned on improvement of a new north-south collector road”*



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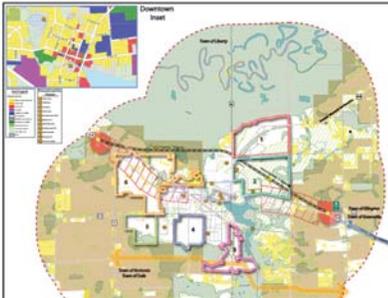
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### Future Land Use Map

Example: Village of Hortonville

Map drawn in “bubble” fashion showing priority areas for future development within village and extraterritorial jurisdiction



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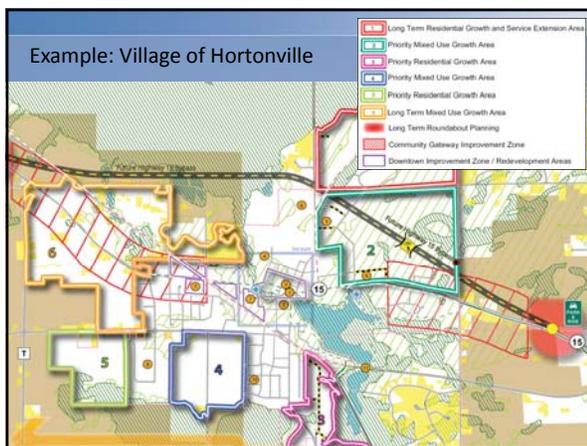
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### Example: Village of Hortonville



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### Legislative Role

- Set timeline and process for reviewing plans and ordinances and criteria for amendments.
- For example:
  - Amendments considered upon request of landowner, local government, etc.
  - Amendments considered annually or at another specified time.
  - You must review and update the comprehensive plan at least once every 10 years (per state statute)

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### Annual Self-Audit

- Hold joint meeting with governing body, plan commission, zoning board and staff
- Monitor progress towards plan implementation
- Summarize number and types of rezones, conditional uses, variances, appeals, etc.
- Make recommendations to clarify plan or ordinance language that is outdated, unclear, weak, overly restrictive, or otherwise problematic

See PC Handbook (chapter 6, pg. 11) or BOA Handbook (chapter 19)

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**Example: City of Oconomowoc**

**development activity**

**CONDITIONAL USE PERMITS (CUP)**  
 The Plan Commission and Common Council reviews all conditional use permits. These permits are generally for new construction or uses that require some conditions to be placed on the operations. The permits are issued after the City conducts a public hearing, Plan Commission recommendation, and Common Council approval. The following permits acted on by the City in 2013:

- Lake Country Dog CUP renewal to add Outside Dog Run 535 E. Wisconsin Avenue
- Pleasant Street Bed & Breakfast CUP conversion of residence into a B & B 329 Pleasant Street
- His Auto CUP renewal for Auto Repair Business 202 E. Wisconsin Avenue
- Kwik Trip Gas Station CUP for fuel sales at a new gas station Oconomowoc Parkway & Summit Ave.

**SITE PLAN REVIEW**  
 The Plan Commission reviews all site plans and the following approvals were granted in 2013:

- First Bank Financial Centre Parking Lot 123/127 South Street
- First Bank Financial Centre Building Addition 155 W. Wisconsin Avenue
- Kwik Trip Gas Station Gas Station Oconomowoc Parkway & Summit Ave.

**REZONINGS**

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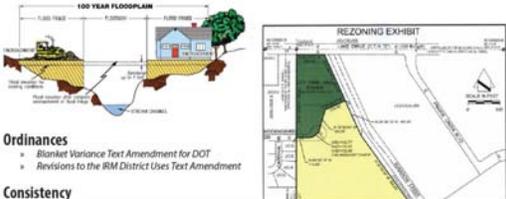
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**Example: City of Oconomowoc**

**long range planning initiatives**

**Floodplain**  
 • Floodplain Ordinance Revisions to bring Ordinance into compliance with National and State requirements.

**Comprehensive Plan**  
 • Revise Comprehensive Plan, Citizen's Bank Property, between Lisbon Road & Lake Drive, SR to Medium Density Residential



**Ordinances**  
 • Blanket Variance Text Amendment for DOT  
 • Revisions to the IRM District Uses Text Amendment

**Consistency**

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**Consider Incremental Updates**

- Why Update?
  - Unforeseen or changing conditions
  - Changing community desires
  - Changes in political leadership
  - Plan/ordinance not performing as expected
  - Errors in the original document

*"The real issue is not the age of the plan, but its effectiveness."*

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**Political Process**

Talk to elected officials on a regular basis long before you have something for them to adopt:

- *Why are we doing this?*
- *What does the current plan/ordinance say?*
- *What are the proposed changes?*
- *How will the proposed changes impact the community?*

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**Political Process**

Identify the drafting team, local constituents, and project champions:

- ✓ Local officials,
- ✓ Developers,
- ✓ Neighborhood groups,
- ✓ Environmental groups,
- ✓ Design professionals,
- ✓ Business owners,
- ✓ Other community groups

*Who will move the project forward and keep it on the agenda?*

*How will you involve each group?*

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**Document Design**

- Organization and structure (table of contents, numbering, index, appendix)
- Writing style (avoid legalese where possible)
- Cross-referencing (say it once)
- Tables (summarize lots of data)
- Graphics (show what you mean)
- White space and contrast




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**Signs of a Good Plan/Ordinance**

- Legally sound
- Reflects community desires
- Result of public involvement
- Users understand it
- Local officials can apply it

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*Only a crisis – actual or perceived – produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and available until the politically impossible becomes politically inevitable.*

--Milton Friedman

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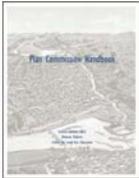
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**Recommended Resource**

**Plan Commission Handbook (CLUE, 2012)**  
[www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx](http://www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx)

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

Plus forms, worksheets, glossaries and recommended resources




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**Thank You!**

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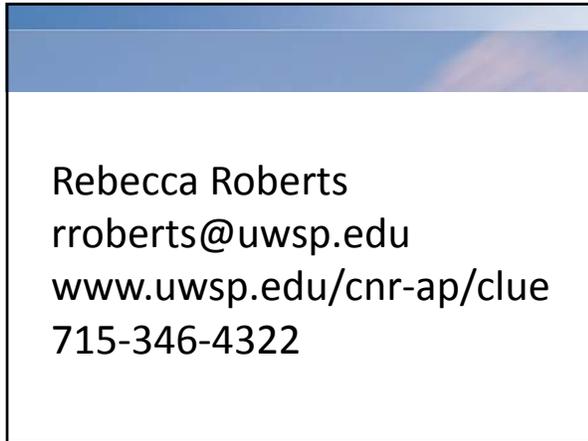
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