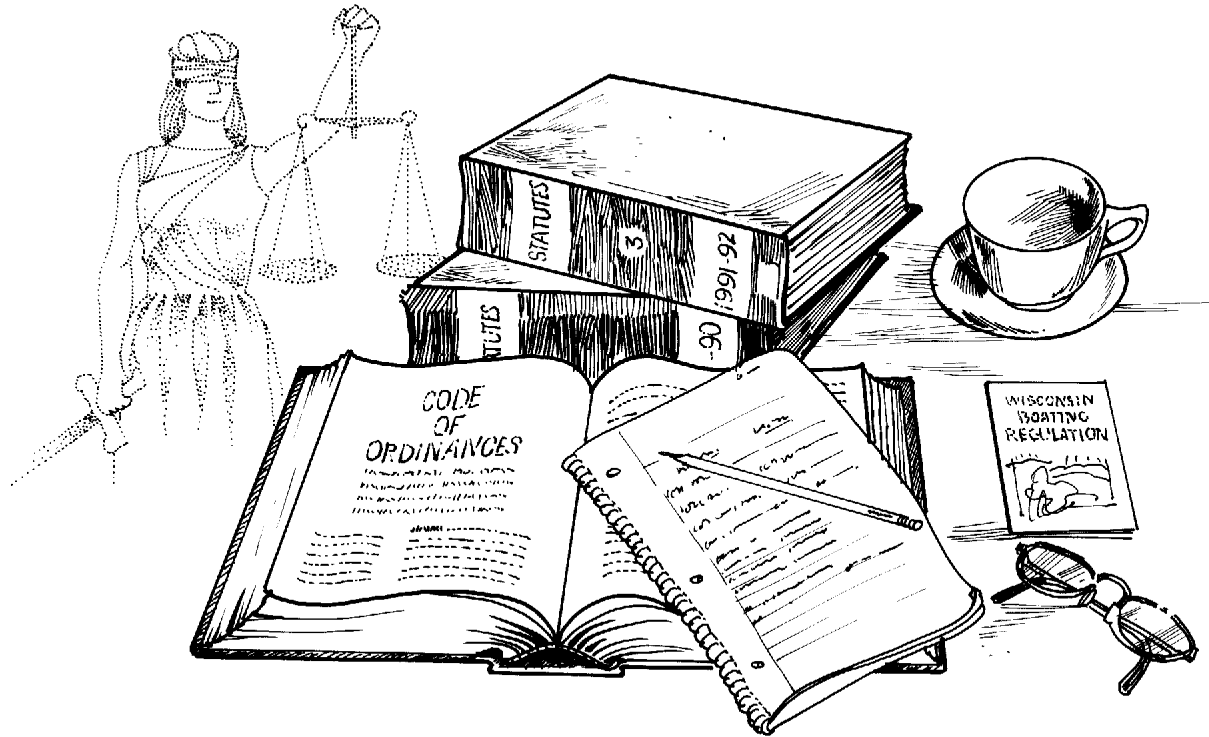


# The Role of the Plan Commission



Rebecca Roberts  
Center for Land Use Education  
University of Wisconsin-Stevens Point/Extension

# Who is here today?



- ✓ Plan commission members?
- ✓ Local government officials?
- ✓ Others?

# Presentation Outline

## Plan commission roles and responsibilities

- ✓ Community planning and plan implementation
- ✓ Development review (conditional use, rezone, plats, etc.)
- ✓ Referrals and advisory recommendations

## Procedural requirements

- ✓ Open meetings law
- ✓ Ethical conduct
- ✓ Making and recording decisions

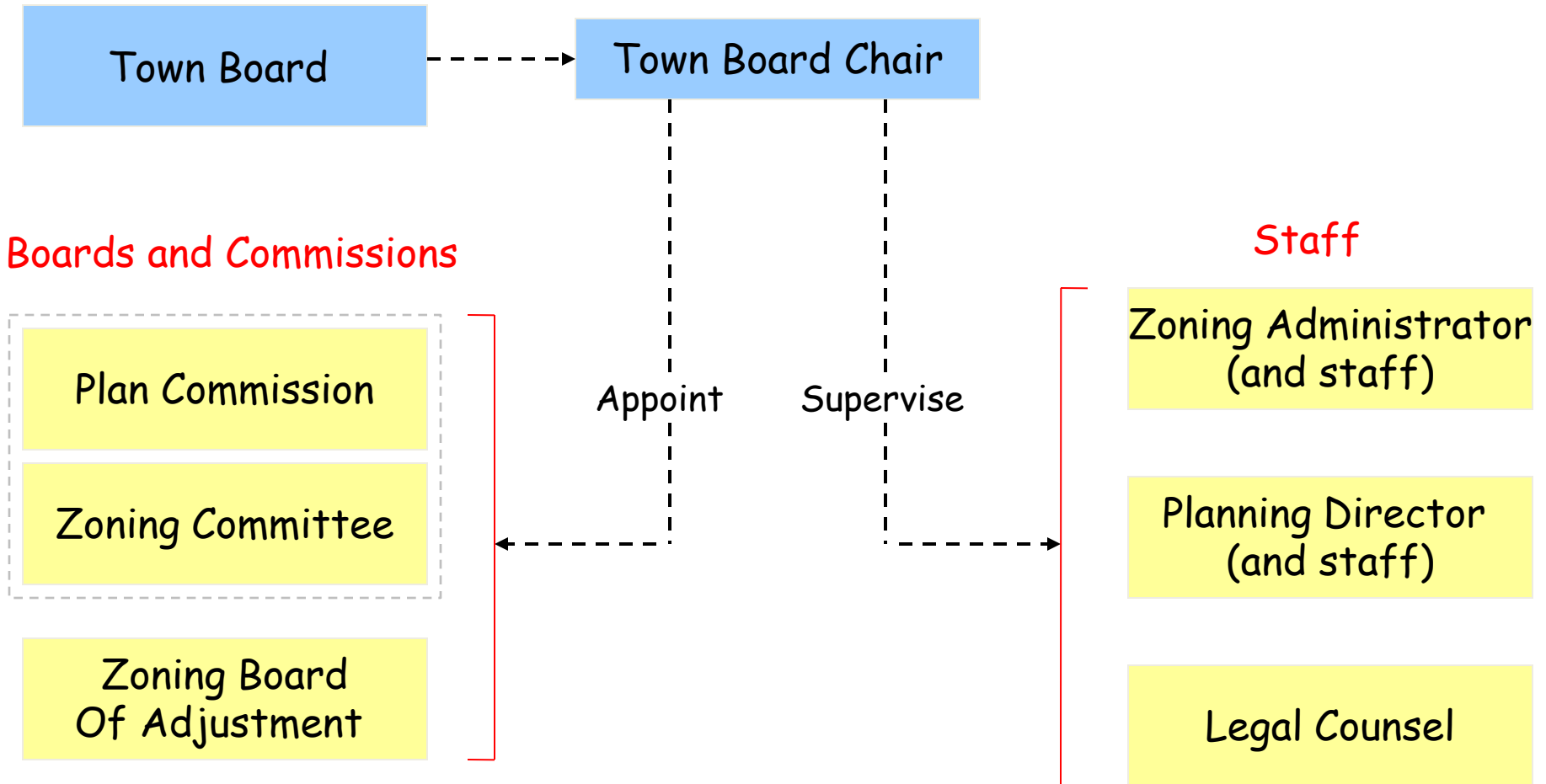
## Questions & answers

# Local Government Structure

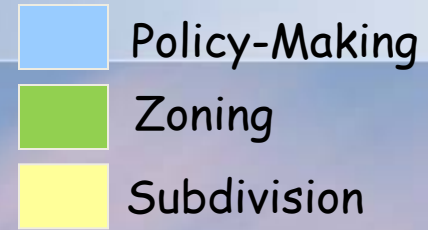


## Governing Body

## Chief Presiding Officer



# Local Government Structure



## Governing Body

Town Board

Plans, ordinances,  
amendments

Conditional use  
permits?

Plat review?

## Boards and Commissions

Plan Commission

Policy  
Recommendations

Conditional use  
permits?

Plat review?

Zoning Board  
of Adjustment

Conditional use  
permits?

Variances

Administrative  
appeals

## Staff

Zoning Administrator  
(and staff)

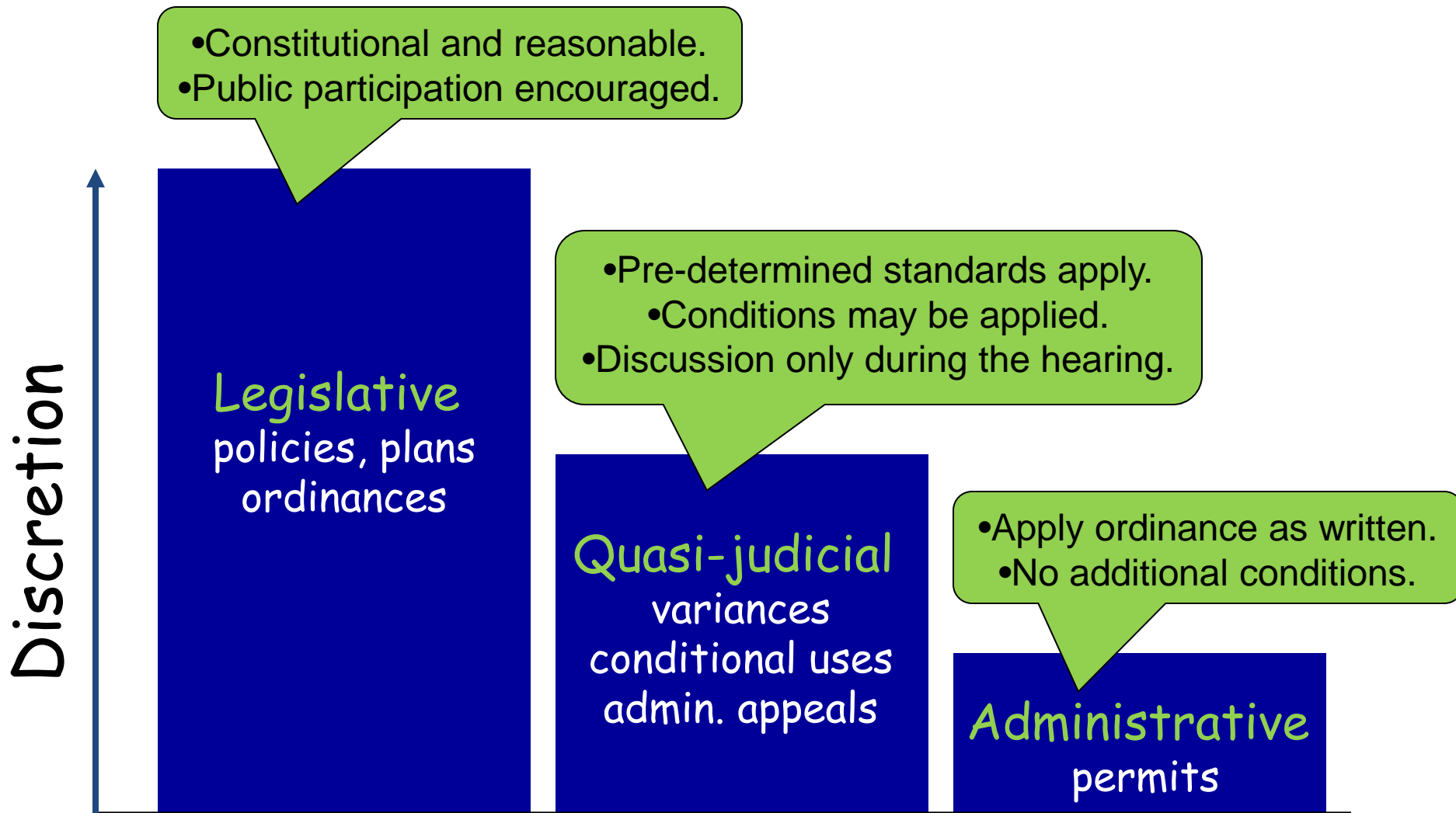
Planning Director  
(and staff)

Legal Counsel

Regular zoning  
permits



# Rules for Decision-Making



# Types of Community Plans

## Functional Plans:

- Land Use Plan
- Parks & Recreation Plan
- Housing Plan
- Facilities-Infrastructure Plan
- Economic Development Plan
- Disaster-Mitigation Plan
- Transportation Plan
- Transit Plan
- Bicycle & Pedestrian Plan
- Etcetera...

## Spatial Plans:

- Site Plan
- Neighborhood Plan
- Regional-Intergovernmental Plan

## Comprehensive Plan

- considers functional and spatial components

# Comprehensive Planning Law

(Wis. Stat. §66.1001)

- A Comprehensive Plan must:
  - Address 9 elements
  - Include written procedures for public participation
  - Be widely distributed for review/comment
  - Be adopted by ordinance following public hearing
  - Be updated at least once every 10 years
- Beginning Jan. 1, 2010, new or amended zoning, land division and official mapping ordinances must be consistent with plan
- Consistent means “furthers or does not contradict the objectives, goals and policies of the comprehensive plan”



# Comprehensive Plan Status

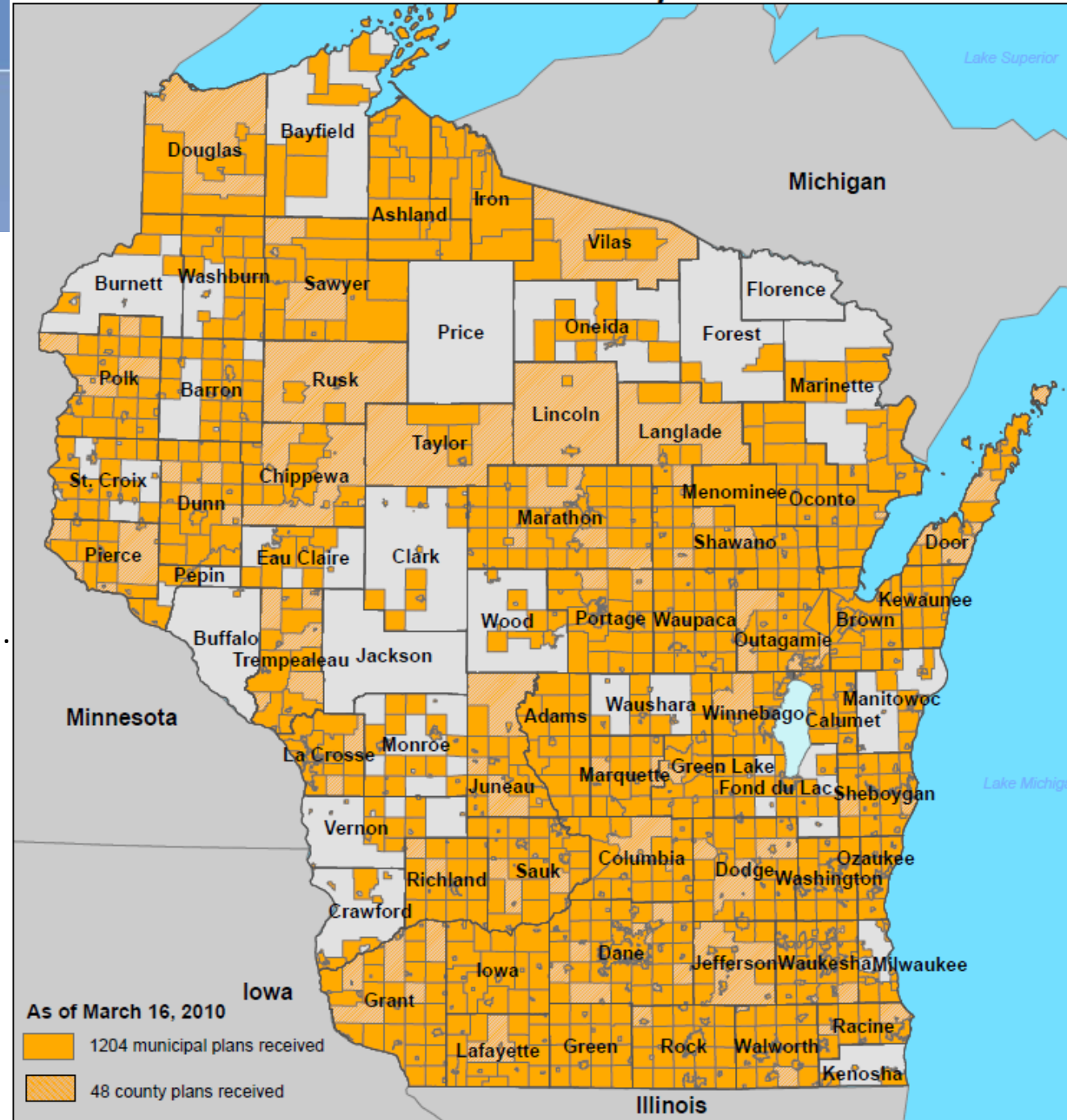
Two-thirds of local governments have zoning, land division or official mapping ordinances – upon adoption or update, these tools must be consistent with a comprehensive plan.

90% of these governments have adopted or are in the process of developing a comprehensive plan.

Of 1,923 local governments:

- 1,252 (65%) adopted plans
- 353 (18%) process underway
- 318 (17%) not planning/known

[www.doa.state.wi.us/docview.asp?docid=8078](http://www.doa.state.wi.us/docview.asp?docid=8078)  
(March 2010)



# Role of the Plan Commission

- Comprehensive planning
  - Develop and recommend comprehensive plan for adoption by governing body
  - Periodically review and update the plan, at least once every ten years
  - Review new or amended zoning, subdivision and official map ordinances for consistency with the plan

# Role of the Plan Commission

## Consistency Review

- Consistent means *“furthers or does not contradict the objectives, goals and policies contained in the comprehensive plan”* (2009 Wisconsin Act 372)

# Example

## Meaning of “Consistency”

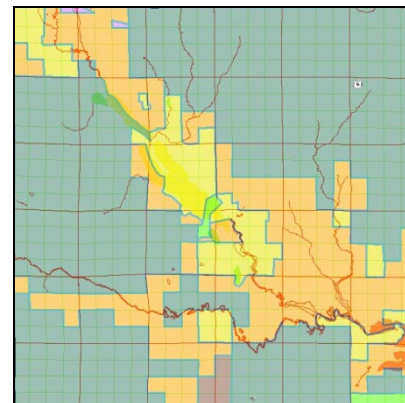
- The plan and supporting ordinances should not contradict each other
- Not a literal, exact translation from plan to ordinance
- Ordinance will likely include more detailed maps and text
- Absence of policy does not create an inconsistency



Planned Land Use Map

Major Land Use Designations:

- Public Forest
- Private Forest
- Environmental Corridor
- Rural Single Family Residential
- Rural Lands



Zoning Map

Major Zoning Districts:

- Forestry
  - Recreation
  - Rural Residential
  - Rural Lands
- Lakes Classification:
- High Sensitivity
  - Moderate Sensitivity
  - Low Sensitivity

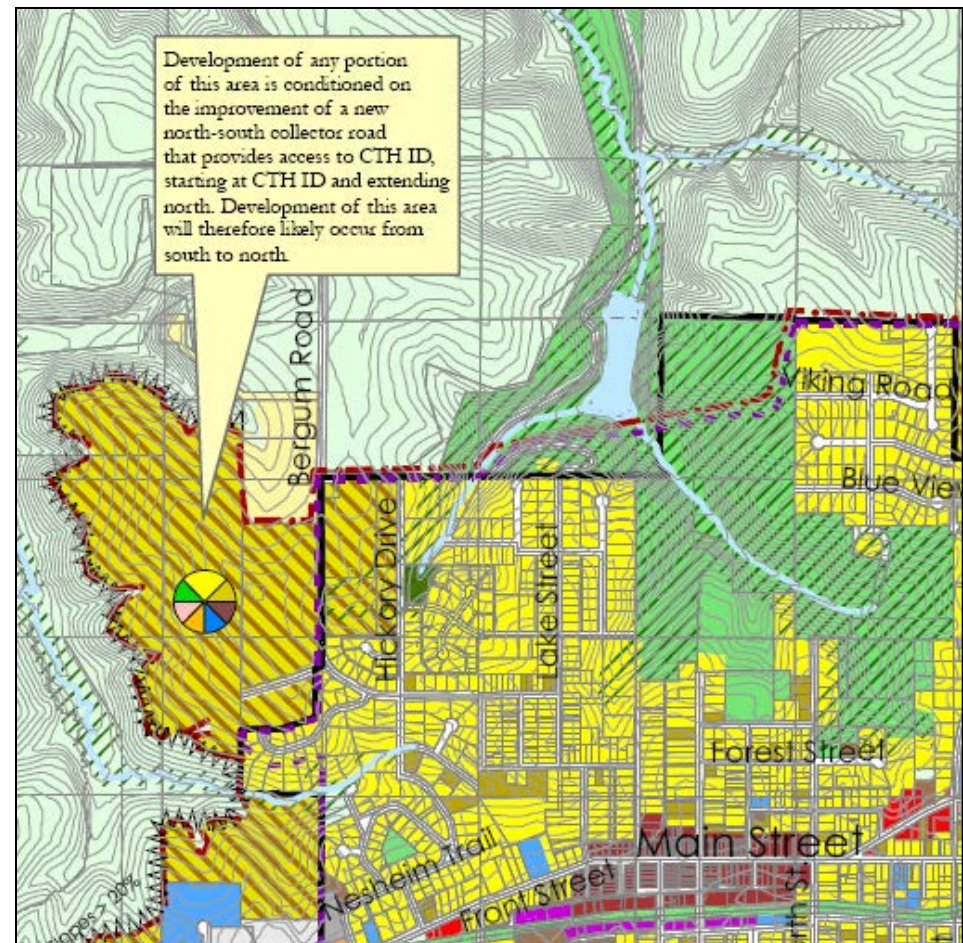
Example: Town of Wilson, Lincoln County

# Example

- Village of Mount Horeb – Future Land Use Map

Plan specifies conditions under which growth may occur:

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

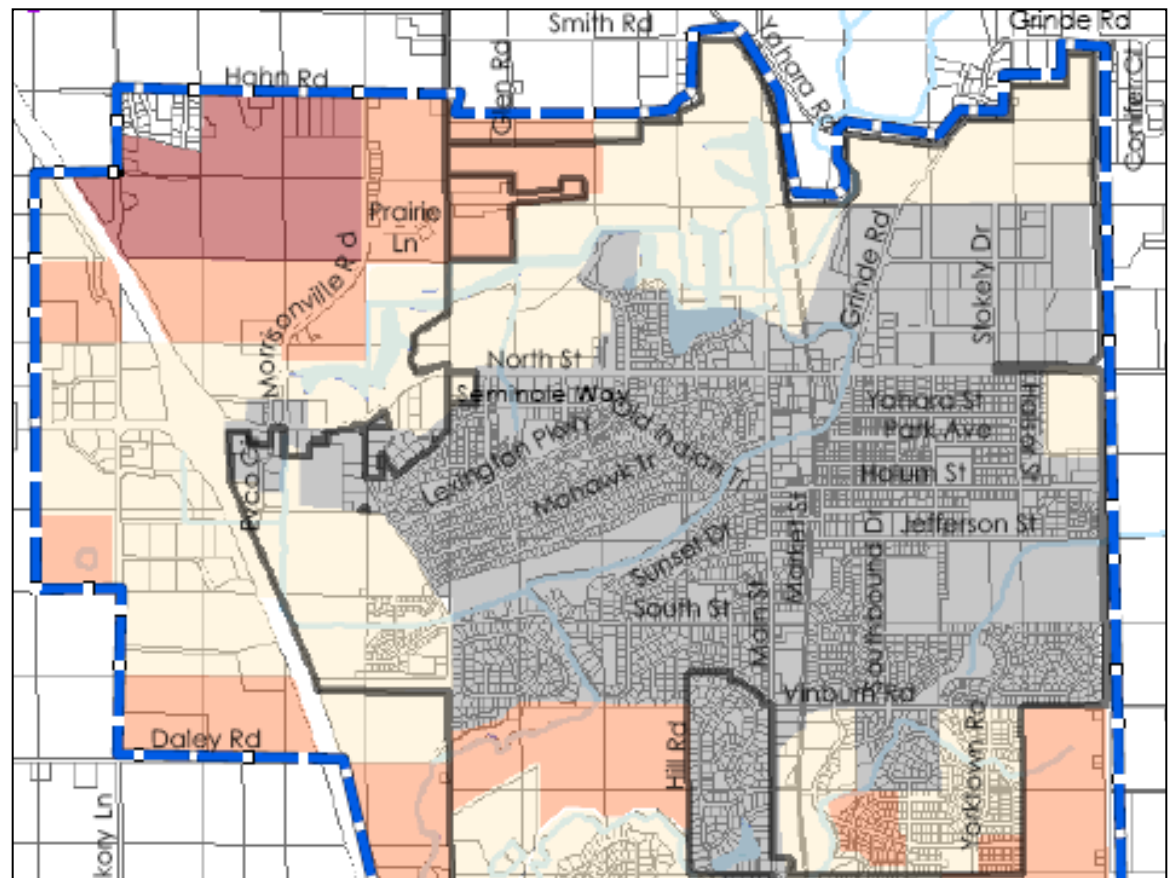
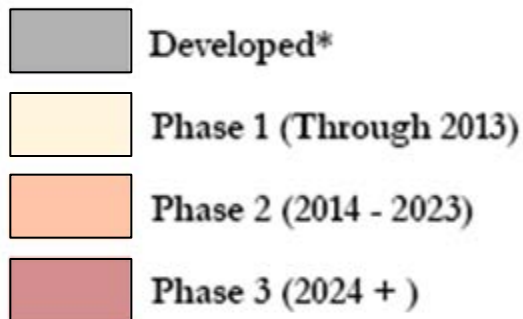


# Example

- Village of DeForest – Growth Phasing Map

Comprehensive plan specifies desired timing of development






## Growth Phasing Areas

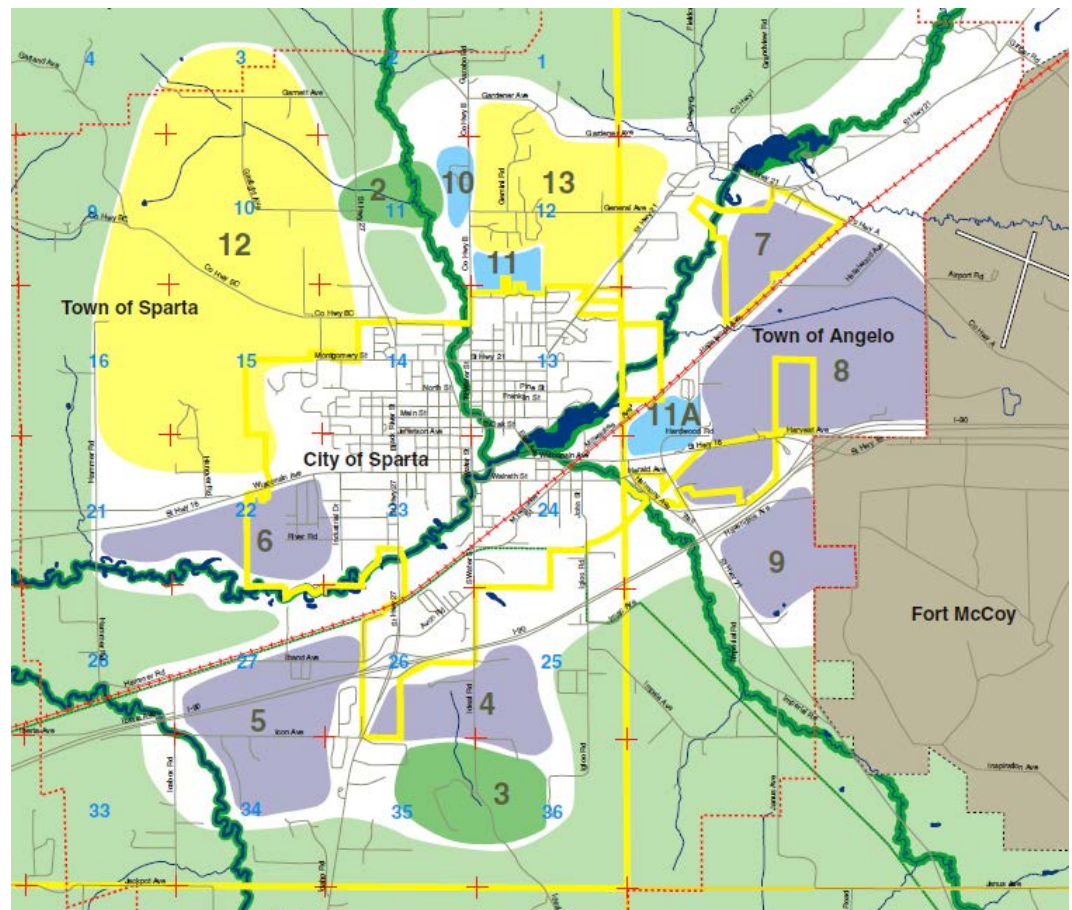


# Example

- City of Sparta – Development Concepts Map

Maps are drawn in “bubble” fashion showing general locations for future development

- 1  Open Space/Environmental Corridor
- 2-3  Park
- 4-9  Industrial
- 10-11A  Institutional
- 12-13  Single Family Residential



# Role of the Plan Commission

## Plan Updates and Amendments

- Set timeline and process for reviewing plan and criteria for considering plan amendments
- For example:
  - Amendments considered upon request of landowner, local government, etc.
  - Minor amendments considered annually or semi-annually
  - Major review and rewrite at least once every 10 years (per state statute)



# Plan Amendments

- Same procedures as required for plan adoption (Wis Stat. 66.1001(4))
  - Written public participation procedures
  - Plan distributed for review and comment
  - Class 1 notice provided at least 30 days prior to public hearing
  - PC resolution recommending plan adoption
  - GB ordinance adopting plan

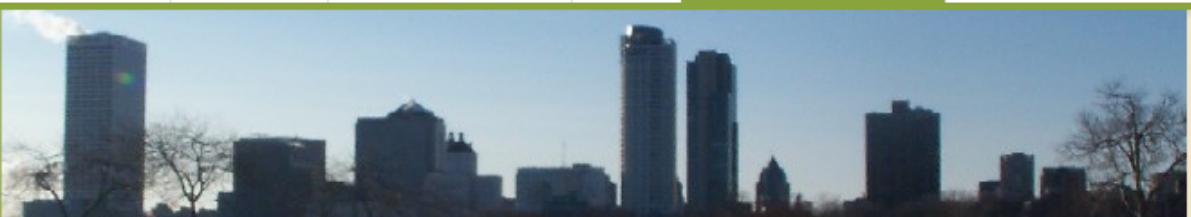
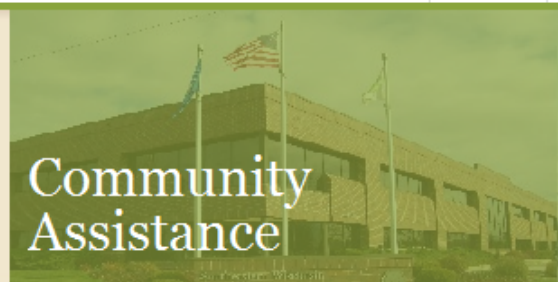
# Recommended Resource

## Sample Documents for Comprehensive Plan Amendments

- ✓ Southeastern Wisconsin Regional Planning Commission, June 2010
- ✓ [www.sewrpc.org/SEWRPC/communityassistance/EducationalServices2.htm#SmartGrowth](http://www.sewrpc.org/SEWRPC/communityassistance/EducationalServices2.htm#SmartGrowth)

### Includes:

- Application form
- Public hearing notice
- Plan commission resolution recommending plan amendment
- Local government ordinance adopting plan amendment
- Sample public participation procedures
- Local government resolution adopting procedures

- Educational Services**
- Advisory Services
- Review Services
- Project Planning Services
- Project Management Services
- County Surveyor Services

### Comprehensive Planning (“Smart Growth”)

The following materials have been developed by SEWRPC to assist county and local governments in Southeastern Wisconsin in preparing and amending their comprehensive plans:

- [Sample Amendment Forms for Towns that have Adopted an Independent Comprehensive Plan](#)
- [Sample Amendment Forms for Towns that have Adopted a Multi-Jurisdictional Comprehensive Plan](#)
- [Sample Documents for City and Village Comprehensive Plan Amendments](#)

# Role of the Plan Commission

## Plan Implementation

- Refer to implementation element for a list of programs, policies, tools, actions and other implementation recommendations
  - Identify party responsible for implementation
  - Identify necessary funding and other resources
  - Identify timeline for completing tasks
  - Prioritize or reassign tasks if timeline is not realistic
  - Take on one or two important items to begin

– See CLUE Plan Implementation Factsheets

# Plan Implementation Toolbox

## Regulatory Tools:

- Zoning
- Official mapping
- Subdivision regulation
- Cluster/conservation design
- Sign ordinances
- Driveway ordinances
- Building and sanitary codes
- Livestock facility siting ordinance
- Stormwater management

## Educational/Voluntary/Fiscal Tools:

- Pamphlets, brochures and other educational materials
- Public land acquisition
- Land conservation programs
- Purchase or transfer of development rights
- Capital improvement plan
- Impact fees and user fees
- Density bonus
- *And many, many more...*

# Zoning Status

## Counties

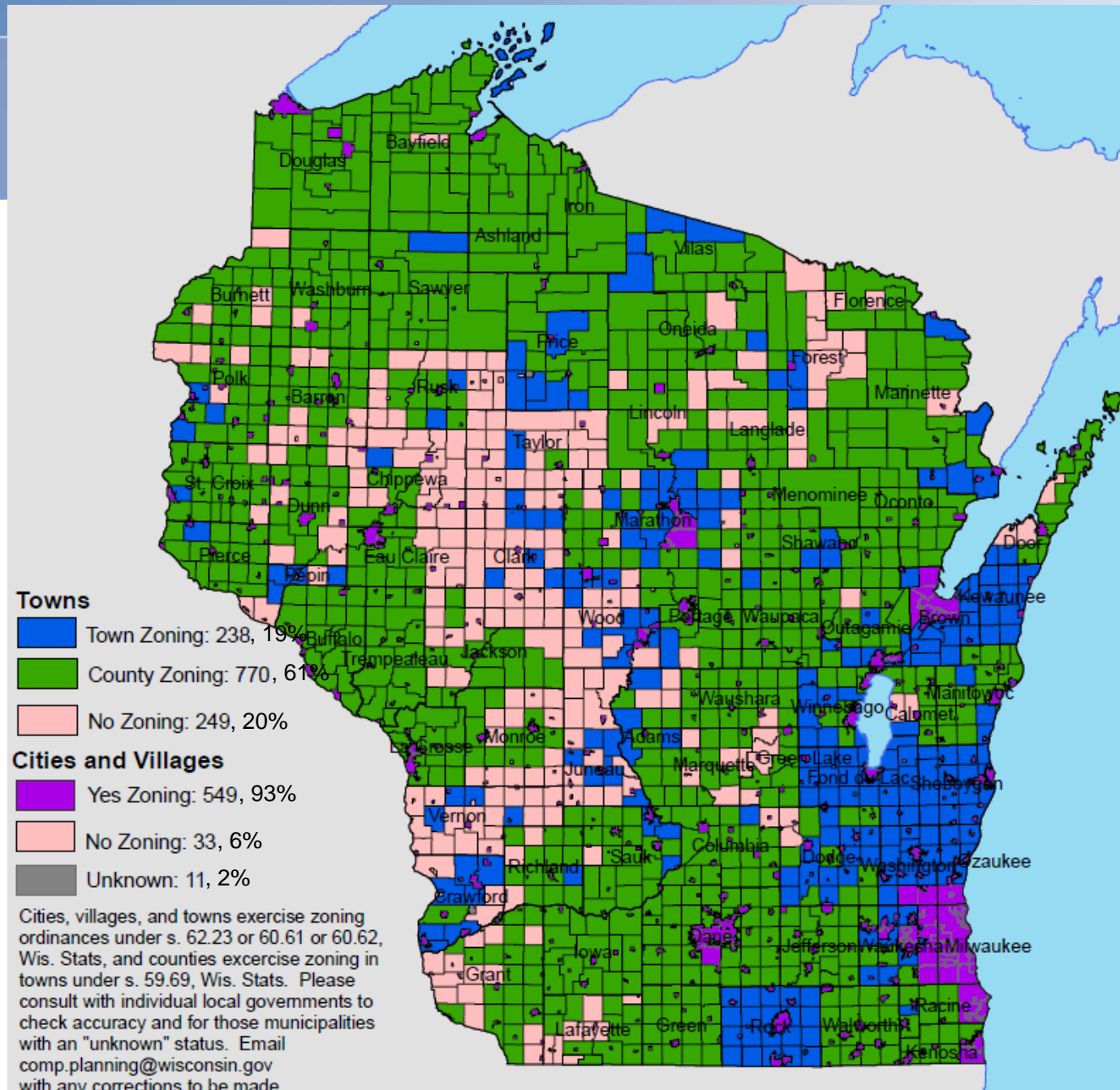
- Required to administer shoreland/wetland zoning
- May adopt general zoning in unincorporated areas

## Towns

- May adopt general zoning if no county zoning or after adoption of village powers
- May adopt shoreland zoning if more restrictive than county

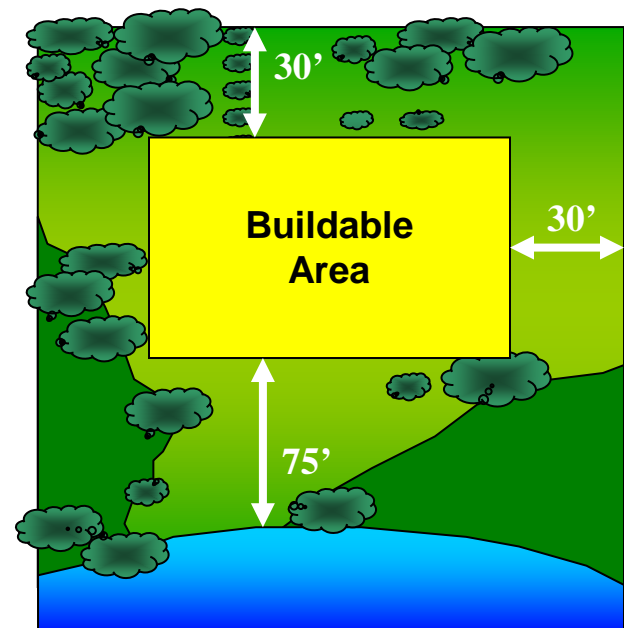
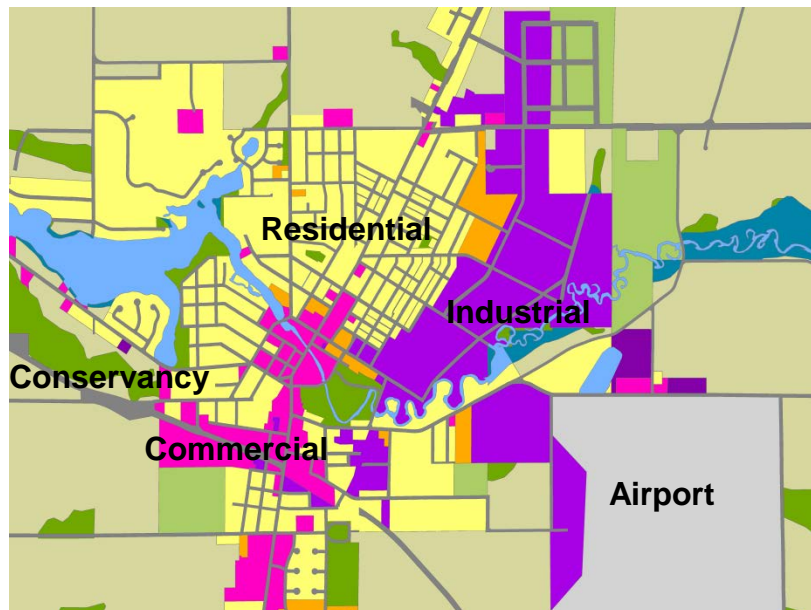
## Cities/Villages

- May adopt general zoning and extra-territorial zoning (1.5-3 miles of boundaries)
- May have shoreland or floodplain zoning - required in some circumstances



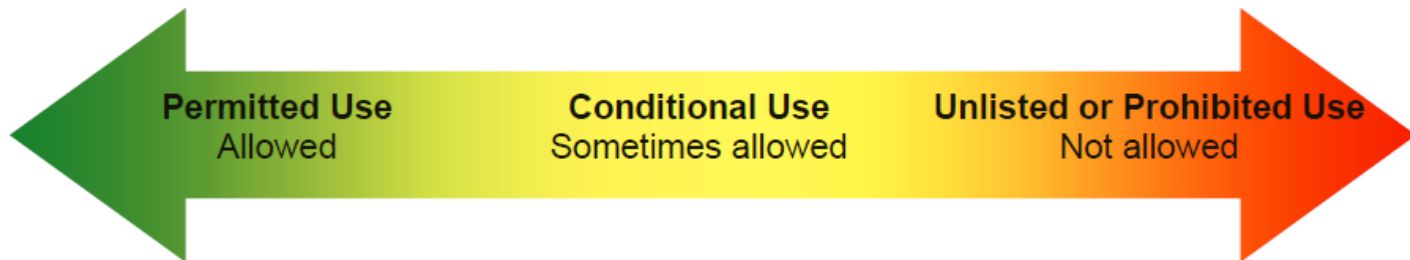
# Zoning

- A zoning ordinance contains 2 parts:
  - Map – divides the community into districts
  - Text – describes allowable uses and dimensional restrictions (i.e. lot size, density, setbacks, height, etc.)



# 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





# Zoning – Conditional Uses

- 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
  - Conditions cannot be changed unless the permit is revoked or expires
  - OK to grant limited-term permits for temporary uses (i.e. gravel pit)
  - Otherwise, the permit runs with the property

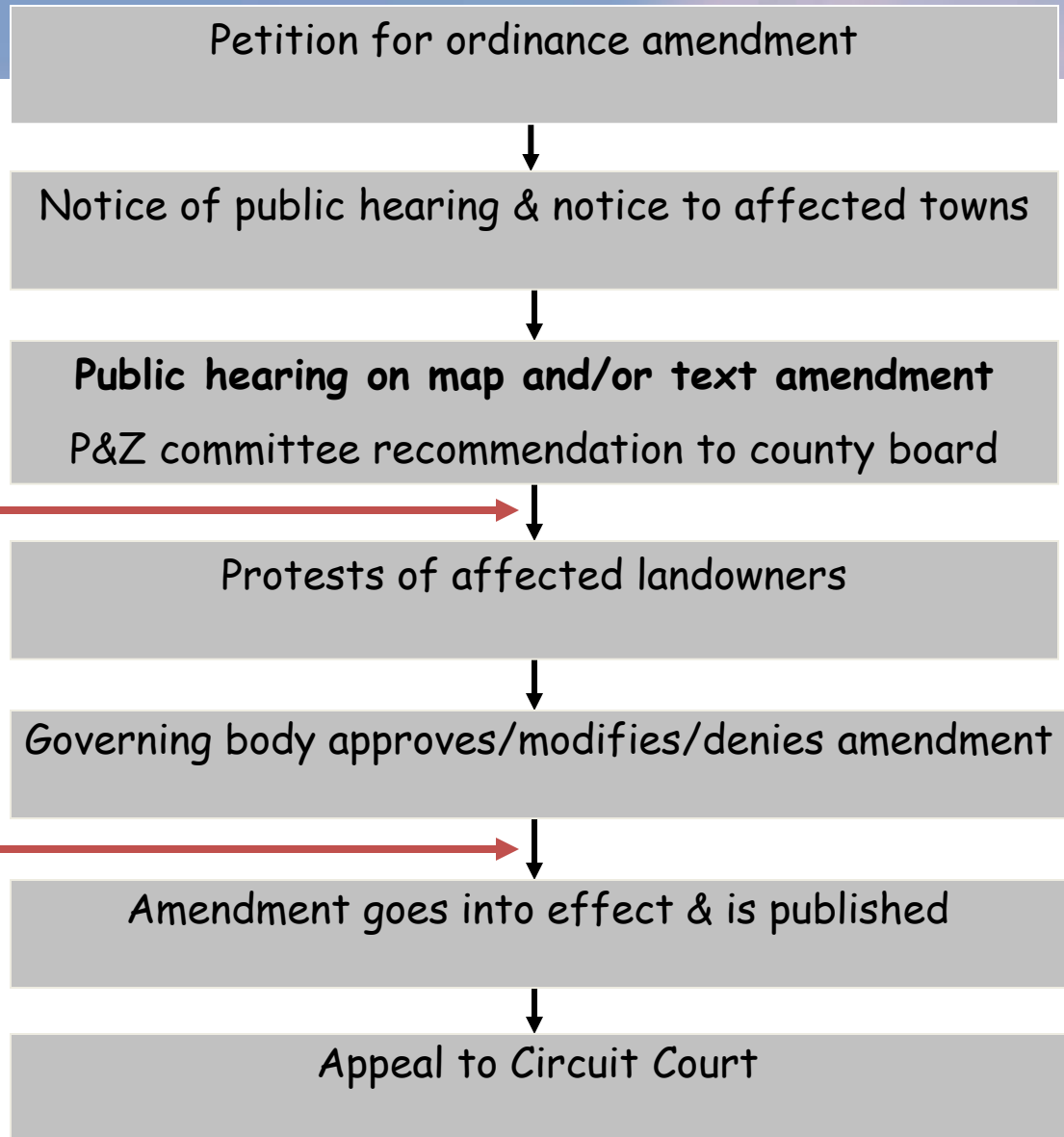
# Zoning – Relief Mechanisms

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

# Zoning – Amendments

- Legislative decision – reasonable and constitutional
- Criteria for considering ordinance amendments:
  - Consistency with comprehensive plan.
  - Meets criteria for proposed district. May include soil suitability, septic suitability, environmental suitability, proximity to wetlands and adjacent waters, etc.
  - Compatible with adjacent uses. Avoid potential conflicts with neighbors such as noise, litter, lighting, aesthetics, construction erosion, and stormwater runoff.
  - Public purpose. Should provide public purpose or benefit, not merely benefit an individual property owner.

# Veto Authority for Towns under County Zoning



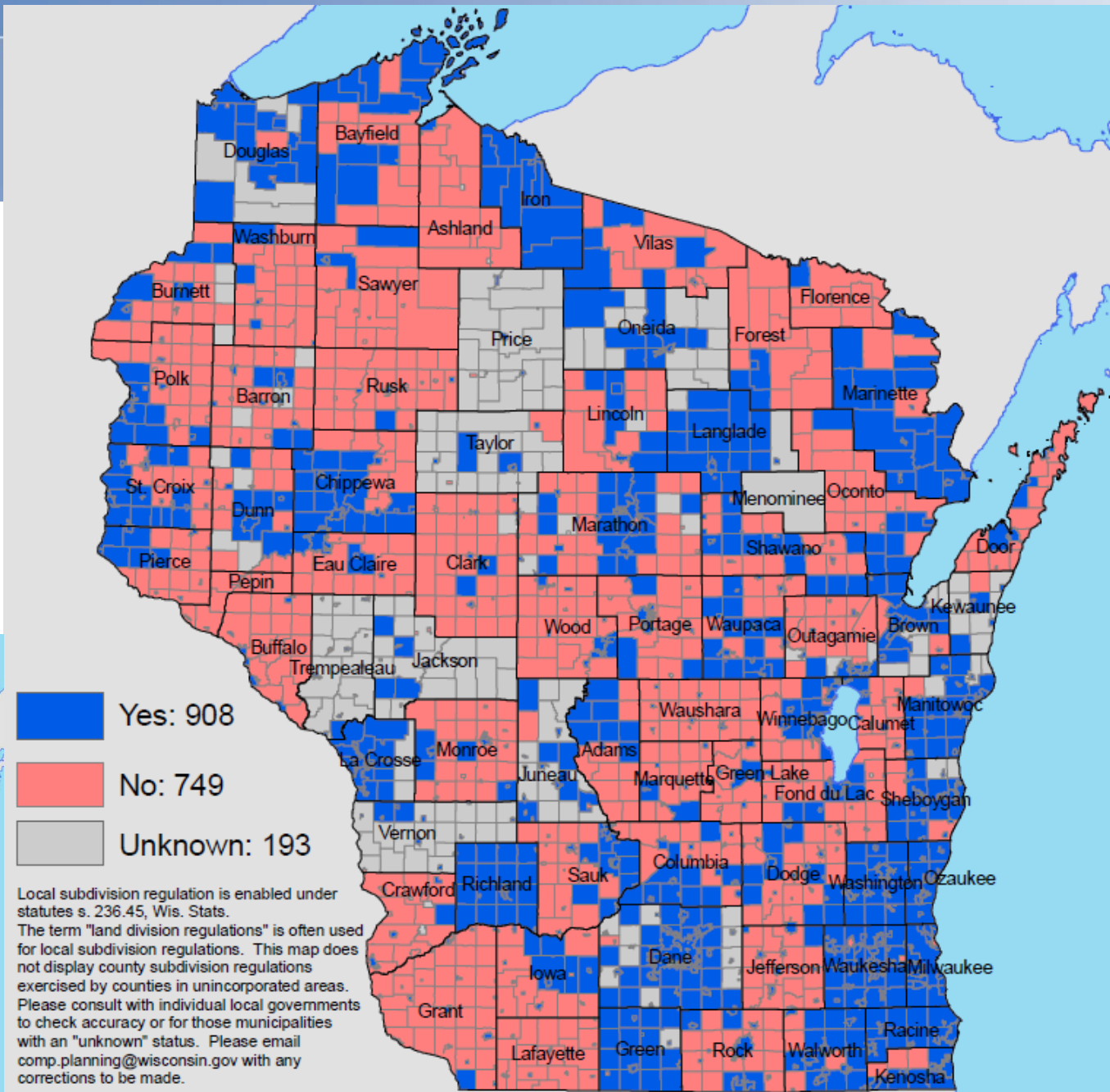
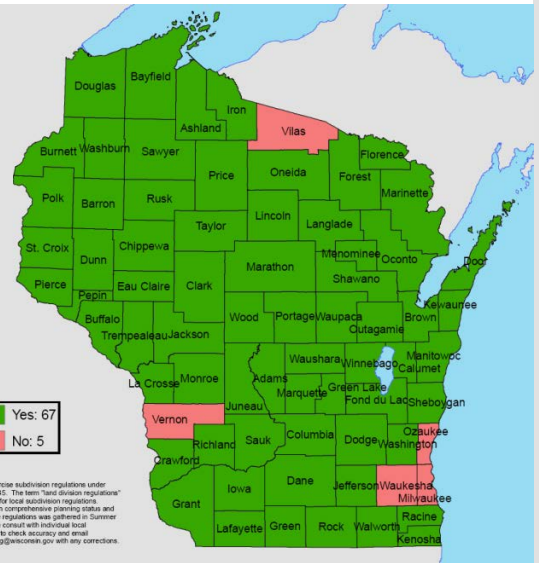
## Stage 1

Towns have 10 days from public hearing to object to changes outside shoreland/floodplain areas. If town disapproves, P&Z must revise proposal or recommend denial.

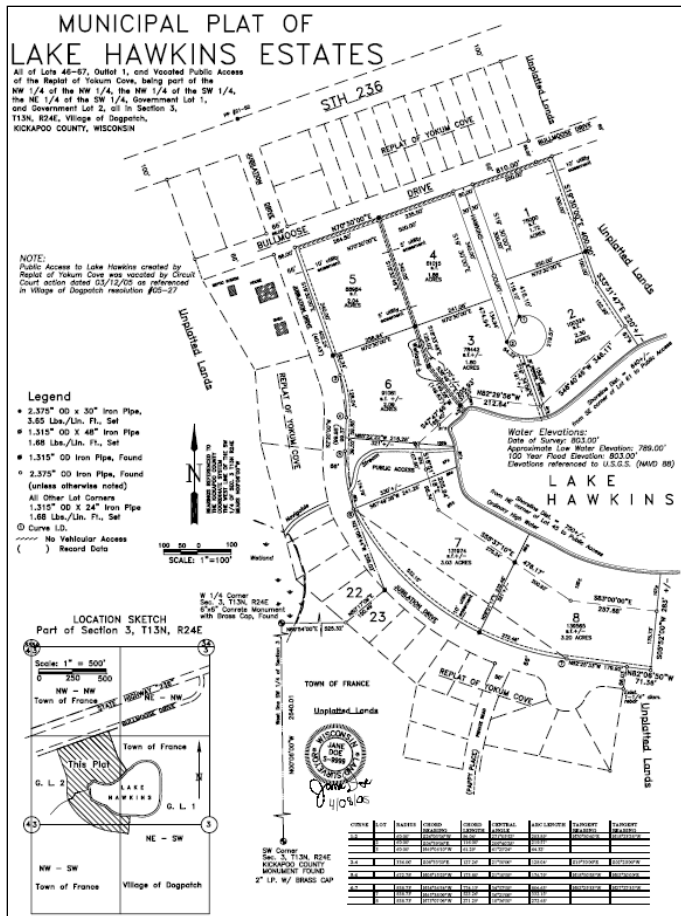
## Stage 2

If majority of affected towns disapprove within 40 days of county vote, amendment does not take effect.

# Land Division and Subdivision Ordinance Status



# Subdivision Regulations



- State provides minimum standards for subdivisions
  - Creation of 5 or more parcels of 1½ acre or less within 5 years
  - plat map, monuments, legal description, sanitation, street access
- Counties, towns, cities, villages may also have ordinances
- Most restrictive ordinance applies

# Role of the Plan Commission

- Land Divisions/Subdivisions
  - Plan commission is required to review new or amended land division/subdivision ordinances
  - Plan commission is required to review all subdivision plats for which local government has review authority under Wis. Stats. ch. 236  
(GB may proceed if PC report not received within 30 days)
  - Governing body may delegate final plat approval authority to plan commission

# Objecting Authorities

- Agencies have authority to object to state-defined subdivisions on the following basis:
  - DOA – compliance with surveying, layout and other statutory requirements
  - DOT – public interest and safety of subdivisions abutting a state trunk or connecting highway
  - DOC – proper soils for on-site sanitary treatment if not served by public sewer (Enforced by County Sanitary Dept)
  - DNR – public sanitary sewers, wetlands protection and earth grading within 500 ft. OHWM of navigable water
  - County planning agency – planned public developments



# Approving Authorities

- The governing body has authority to approve state-defined subdivision plats or delegate authority to the plan commission:
  - City council – if the subdivision is located in the city or its extraterritorial plat review jurisdiction
  - Village board – if the subdivision is located in the village or its extraterritorial plat review jurisdiction
  - Town board – if the subdivision is located in the town
  - County planning agency – if the subdivision is located in the county and outside the city or village plat review jurisdiction

# Basis for Approval

- Plat approval may only be conditioned on:
  - Compliance with local ordinances
  - ~~Consistency with the comprehensive plan~~
  - Provision of public improvements
  - Satisfaction of objections raised by state agencies
  - Requirements of Wis. Stat. Ch. 236

*Removed by 2009 WI Act 372*

# Presentation Outline

Plan commission roles and responsibilities

- ✓ Community planning and plan implementation
- ✓ Development review (conditional use, rezone, plats, etc.)
- ✓ Referrals and advisory recommendations

Procedural requirements

- ✓ Open meetings law
- ✓ Ethical conduct
- ✓ Making and recording decisions

Questions & answers

# Rules for Decision-Making

## 3 Types of Decisions... 3 Standards of Conduct

### 1) Legislative = making or changing laws

Plans, Policies, Ordinances, Amendments

(Governing Body, Plan Commission in advisory capacity)



### 2) Quasi-Judicial = applying laws

Subdivision Review, Conditional Use, Variance, Appeal

(Zoning Board, Plan Commission)






### 3) Administrative = routine ministerial tasks

Permits, Inspections, Personnel Decisions

(Planning and Zoning Staff)



# Rules for Decision-Making

	Legislative 	Quasi-judicial 	Administrative 
Procedural Standards	<ul style="list-style-type: none"> <li>-Open meetings</li> <li>-Public records</li> </ul>	<ul style="list-style-type: none"> <li>-Due process: notice to affected party, right to public hearing, impartial decision-maker, review written decision, opportunity to appeal</li> </ul>	<ul style="list-style-type: none"> <li>-Open meetings</li> <li>-Public records</li> </ul>
Public Input	<ul style="list-style-type: none"> <li>-Public participation widely encouraged</li> </ul>	<ul style="list-style-type: none"> <li>-Communication only during hearing</li> </ul>	
Decision Standards	<ul style="list-style-type: none"> <li>-Wide discretion</li> <li>-Reasonable and constitutional</li> </ul>	<ul style="list-style-type: none"> <li>-Decisions based on ordinance criteria and facts of case</li> </ul>	<ul style="list-style-type: none"> <li>-Apply law as written</li> </ul>

# Open Meetings

Wisconsin's [Open Meetings Law](#) requires:

- meetings are open and accessible to the public, including the disabled.
- the public is provided with advanced notice of meetings.
- closed sessions are limited to specified circumstances and procedures.

# Open Meetings



Purpose test = discussion, information gathering or decision-making on a matter within the jurisdiction of the body.



Numbers test = enough members of a body are present to determine the outcome of an action.

- If one-half of the members of a body are present, there is a meeting unless the purpose test is not met.
- A lesser number of members may meet the numbers test if they can block a decision.

# Open Meetings

- Phone conferences, letters, e-mails or faxes between board members may constitute a meeting if the numbers & purpose tests are met.
- A series of phone calls or conversations to “line up votes” or conduct other business violates the law.
- Discussion of meeting scheduling & logistics is OK.





# Closed Sessions

- Closed sessions are limited by statute:
  - Personnel matters including employee performance, compensation, discipline, etc.
  - Damaging personal information
  - Deliberations regarding property acquisition and other bargaining issues
  - Deliberations concerning a judicial or quasi-judicial “case” with opposing parties
  - Legal consultation for current/likely litigation
  - Others listed at Wisc. Stat. §19.85

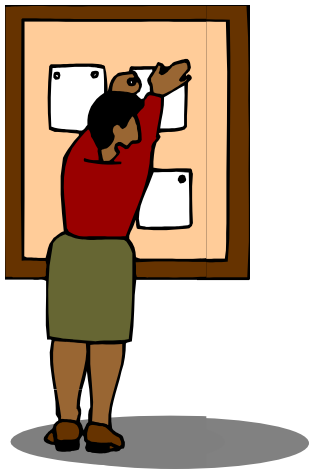


# Conduct of Closed Sessions

- Record individual votes to convene in closed session.
- Those who vote against may participate without liability.
- Attendance limited to body and parent body.
- Legal counsel and others essential to closed session may also attend.
- Consider only matters for which session is closed.
- Motions and decisions must be recorded.

# Public Meetings

- A government meeting is for the purpose of conducting public business.
  - May provide for a period of public comment
  - Only noticed agenda items may be decided
  - Notice requirements:
    - At least 24 hours prior (2 hours for good cause)
    - May be posted (3 locations recommended)
    - Paid, published notices not required
    - Open Meetings Law notice may be incorporated in other required published notice



# Public Hearings

- A public hearing is for the purpose of receiving public comment regarding a pending decision.
  - Notice requirements:
    - 1 newspaper publication at least 30 days prior to comprehensive plan adoption or amendment
    - 2 consecutive newspaper publications in 2 weeks prior to ordinance adoption or amendment
    - Other decisions as specified by ordinance



# 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

# 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



# 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.

# 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*



# 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

# 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.

# Recording Decisions

- Courts will review the written and audio record of appealed decisions and need to be able to follow the reasoning
- Decision-makers must express, on the record:
  - the statutory or ordinance criteria under which the application is decided and
  - the reasons the criteria are or are not satisfied
- The written decision is not required to include the reasons

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

# Recording Decisions

- Decision forms should prompt:
  - Facts of the case
  - Compliance with ordinance standards
  - Decision
  - Related conditions or limitations

# Impartial Decision-Makers

The rules of the game depend on the decision...

- Quasi-judicial decisions must be based on pre-determined standards found in state statutes, case law or local ordinances. Facts of the case matter, not opinions.
  - Conditional use, variance, plat, etc.
- Legislative decisions must be reasonable and constitutional. Public opinion is encouraged.
  - Comprehensive plan, ordinance amendment, etc.

# Thank You!



**LW**  
**EXTENSION**

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Center for Land Use Education  
[www.uwsp.edu/cnr/landcenter](http://www.uwsp.edu/cnr/landcenter)