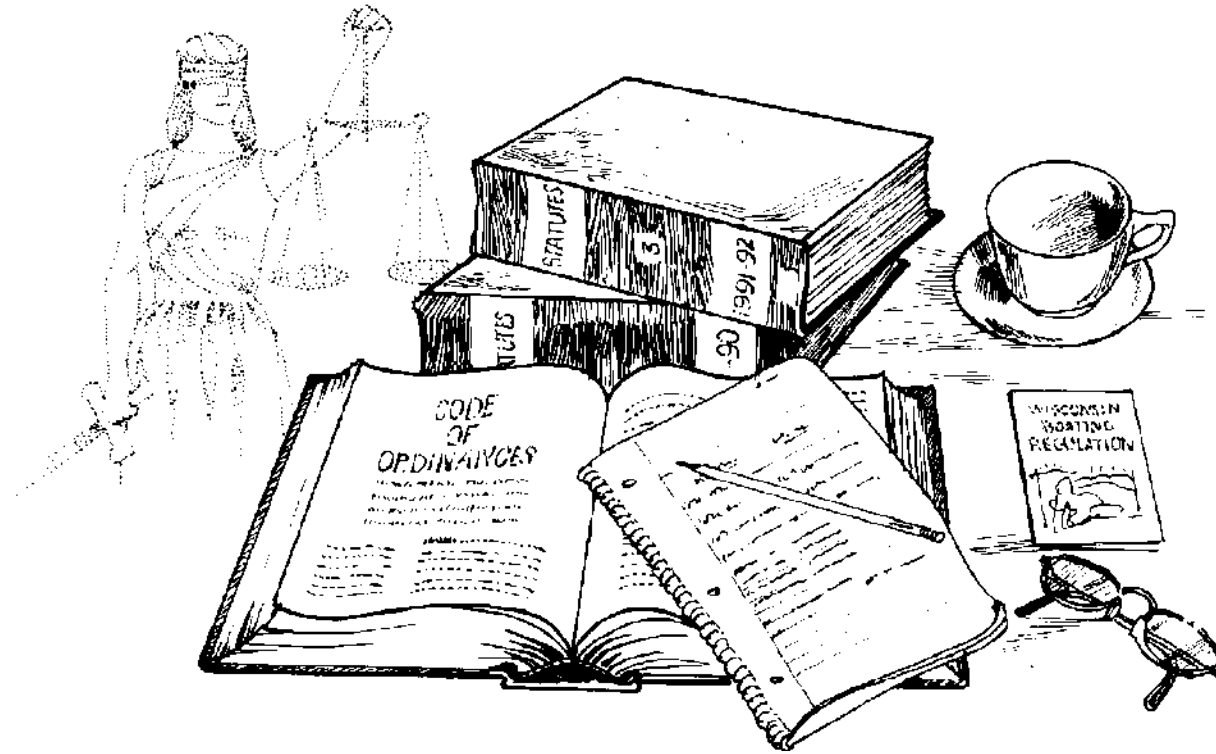


# Conditional Uses and Zoning Ordinance Amendments



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



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



**Extension**  
UNIVERSITY OF WISCONSIN-MADISON

# Zoning

## Counties

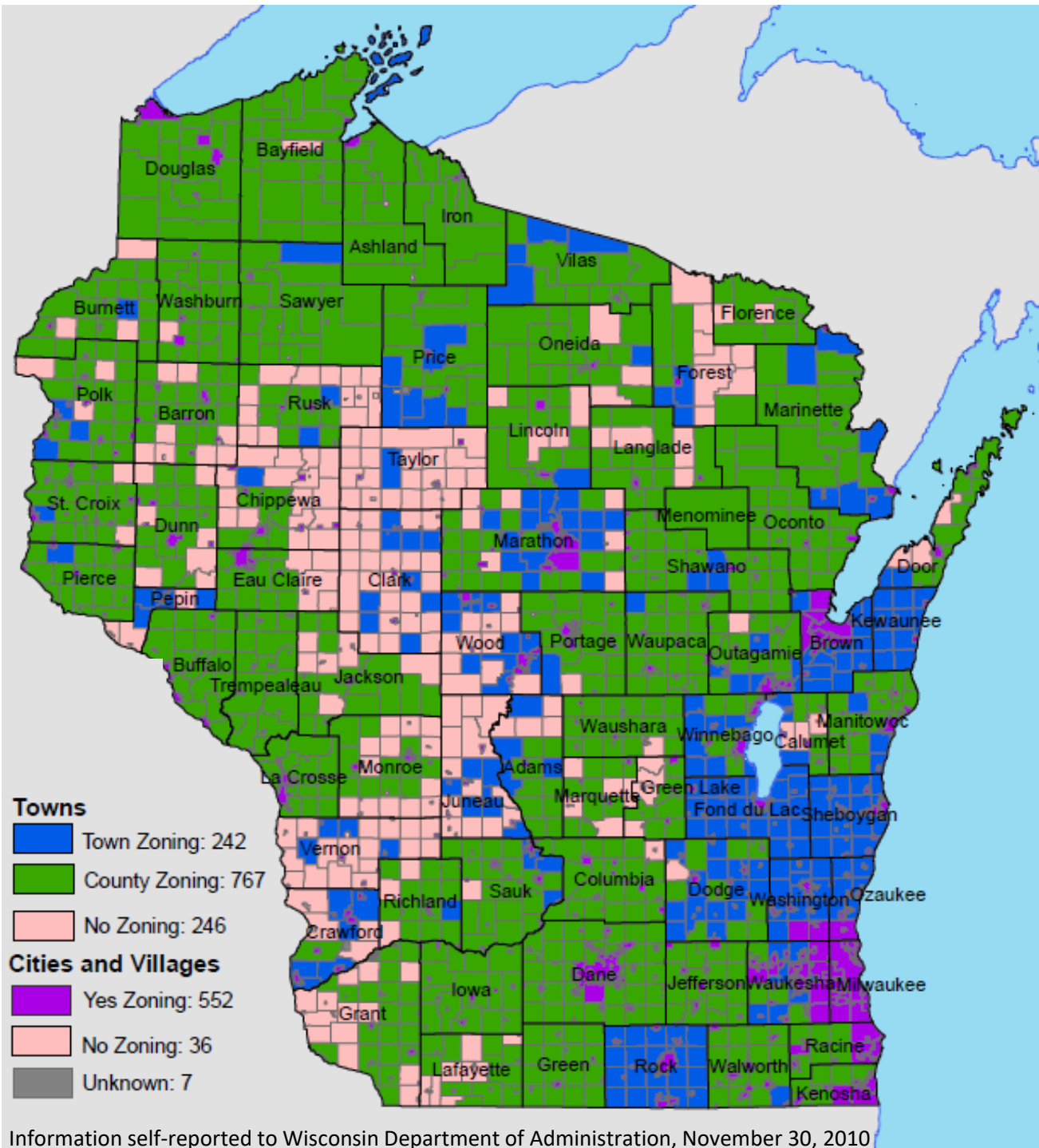
- Required to administer shoreland/wetland zoning
- May adopt general zoning in unincorporated areas

## Towns

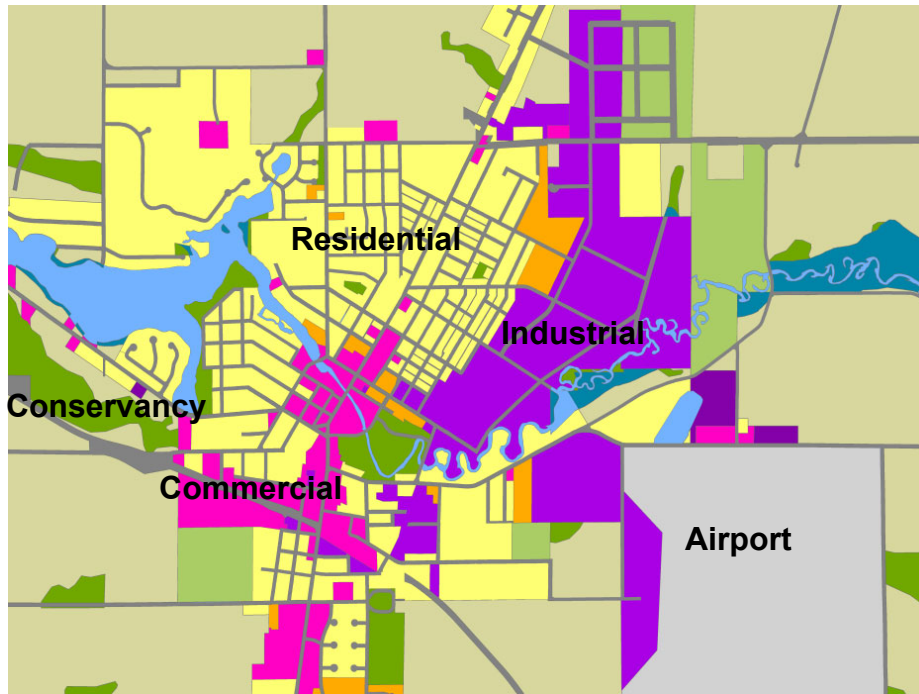
- May adopt general zoning following adoption of village powers or if no county zoning

## Cities/Villages

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



Information self-reported to Wisconsin Department of Administration, November 30, 2010

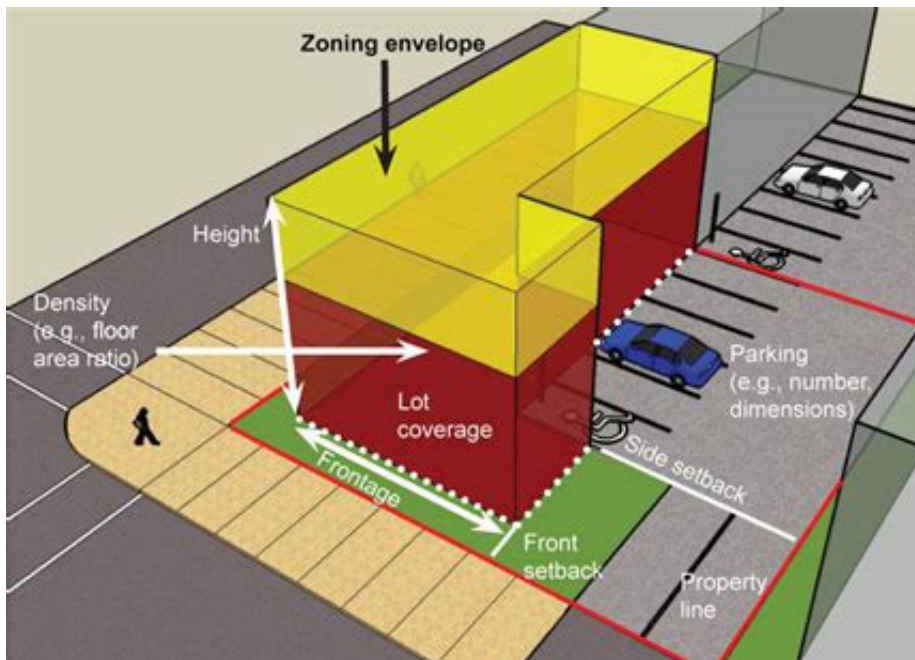


A zoning ordinance contains two parts:

Zoning Map – divides the community into districts

Text – describes:

- purpose of the regulations
- uses for each district
- dimensional standards (lot size, density, setbacks, etc.)
- other requirements (parking, signage, landscaping, etc.)



# Uses for each district:

## Permitted Use

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

Granted by zoning administrator

## Conditional Use

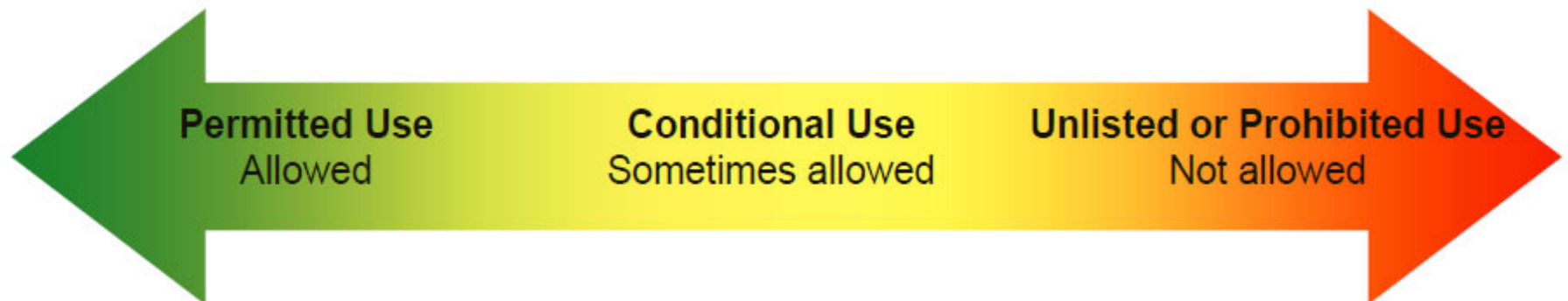
Use is listed for the district and may be allowed if suited to the location

Decided by zoning board, plan commission, or governing body

## Prohibited Use

Use is not listed for the district or is expressly prohibited

May apply for rezone or use variance, if allowed





# Ex. Residential District

## Permitted Uses



## Conditional Uses



## Prohibited Uses



# Sample Use Table

P Permitted
 C Conditional
 - Prohibited

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

# Conditional Uses

- Ordinance must list specific uses allowed in each district and decision criteria
- May be granted or denied based on specific proposal and ability to meet ordinance standards
- Conditions may be attached





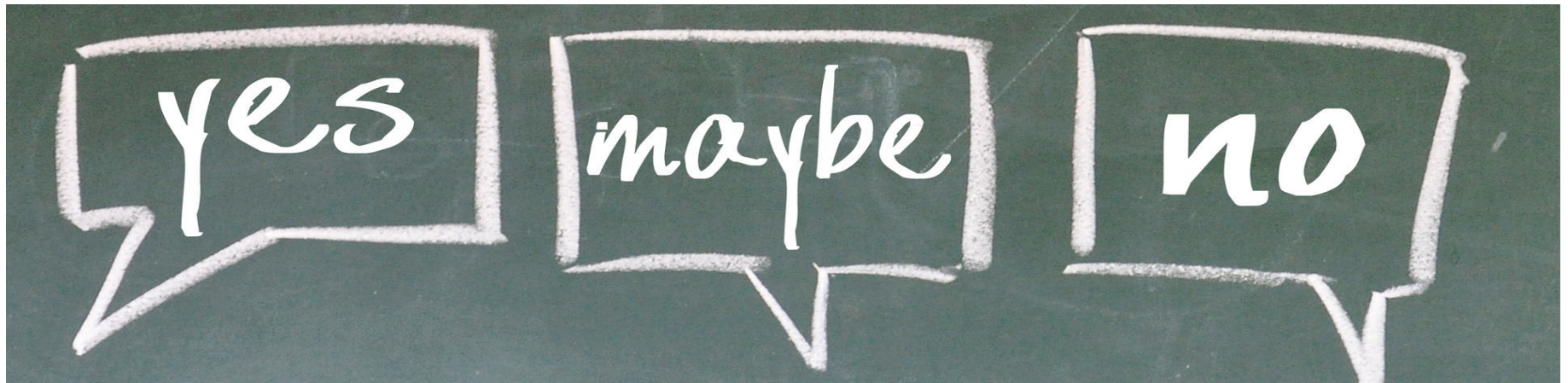
Recent  
court  
case

## *AllEnergy v. Trempealeau County* *2017 WI 52*

- County identified 37 conditions for silica sand mine, then voted to deny permit based on public health, safety and aesthetic concerns.
- Wisconsin Supreme Court supported decision to deny.
- Dissenting opinion argued for less discretion for local governments.







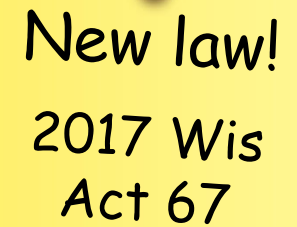
Inclusion of a conditional use in the ordinance is a legislative determination that the use is suitable for the district.

- CUP must be granted, except in extreme circumstances.
- Zoning board focuses on what conditions to impose to mitigate negative impacts.

The zoning board has discretion to determine if a proposed use is appropriate for the given site.

- CUP may be granted or denied.
- Zoning board determines if the use is capable of meeting the ordinance standards and what conditions to impose.

# Conditional Uses

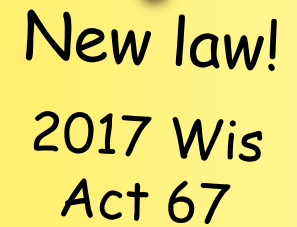


New law!  
2017 Wis  
Act 67

2017 Wisconsin Act 67 created new rules for conditional use permits

- Counties Wis. Stat. 59.69(5e)
- Towns Wis. Stat. 60.61(4e), 60.62(4e)
- Cities and Villages Wis. Stat. 62.23(7)(de)

# Conditional Uses



New law!  
2017 Wis  
Act 67

## Definition

“Conditional Use” means a use allowed under a conditional use permit, special exception, or other special zoning permission, but does not include a variance.



# Conditional Uses

New law!  
2017 Wis  
Act 67

## Process

- Class 2 notice, public hearing
- Decision by zoning board
- Appeal to circuit court

Ordinance may specify alternate route, typically:

plan commission → appeal to zoning board  
governing body → appeal to circuit court

(See Wis. Stat. 59.69(2)(bm), 59.694(1), 62.23(7)(e)1)

# Conditional Uses

New law!  
2017 Wis  
Act 67

## Local government responsibilities:

- Ordinance requirements and conditions must be **reasonable**, and to the extent practicable, **measurable**
- Must support decision to approve or deny the permit, and to attach conditions, with **substantial evidence**
- Conditions must relate to the ordinance **purpose**
- Conditions may limit permit duration, transfer, or renewal

# Conditional Uses

New law!  
2017 Wis  
Act 67

## Definition

“Substantial Evidence” means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit, and that reasonable persons would accept in support of a conclusion.



# Conditional Uses

New law!  
2017 Wis  
Act 67

## Applicant responsibilities

- Must demonstrate that the application and all requirements and conditions established by the local government relating to the conditional use are or shall be satisfied
- Must provide “substantial evidence” supporting the application and demonstrating that the requirements and conditions will be met

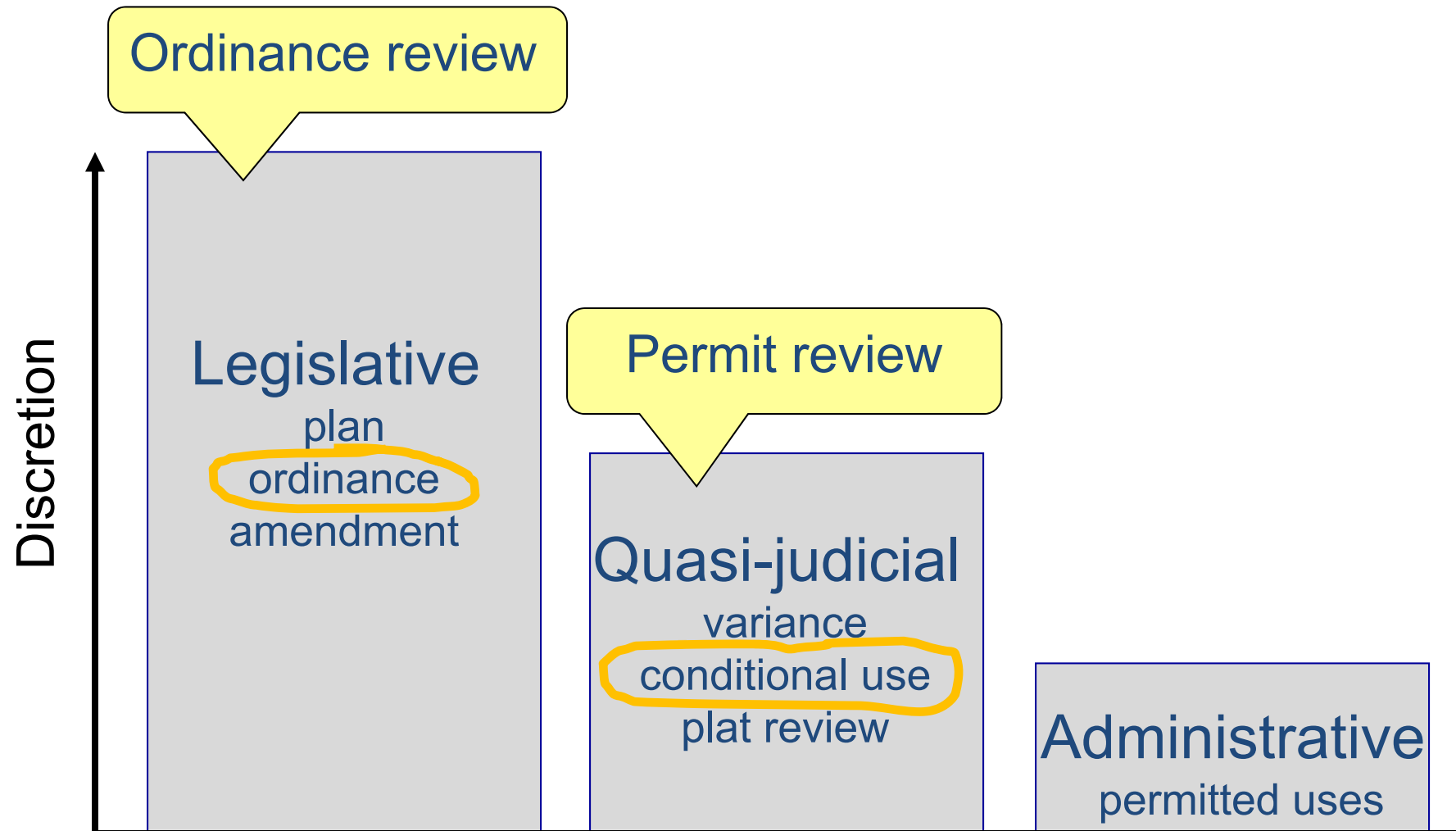
# Conditional Uses

New law!  
2017 Wis  
Act 67

## Permit decision

- If an applicant for a conditional use permit meets or agrees to meet all requirements and conditions specified in the ordinance or imposed by the zoning board, the local government shall grant the conditional use permit

# Discretion Varies with Decision





# Ordinance Review



Review conditional uses listed in your ordinance



Review process for granting conditional uses (class 2 notice, public hearing)



Review standards, requirements and conditions listed in your ordinance



Provide specific authority in your zoning ordinance if you wish to assign review of conditional uses to a body other than the zoning board

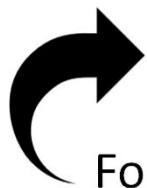


Review purpose statements to make sure they support conditions you are likely to attach

# List of Conditional Uses

## Title 2: Zoning Districts and Uses

Key: P Permitted Use C Conditional Use (Blank) Use Not Permitted													
USE	Residential Districts				Agricultural Districts			Nonresidential Districts					Development Standards
	U-R	L-D-R	R-R	R-E	F-P	G-A	C-V/R-C	N-C	C	B-R	L-I	H-I	
COMMERCIAL, OFFICE, and SERVICE USES													
Adult Entertainment									C				<a href="#">Section 17.204.35</a>
Bank or Financial Institution								P	P	P			
Bar, Tavern, or Micro-Brewery						C		P	P	P			
Bed and Breakfast			C	C		C		C					<a href="#">Section 17.204.36</a>
Business Service Establishment						C		P	P	P			
Car Wash							C	C	C	C			<a href="#">Section 17.204.37</a>
Drive-Through Facility (accessory to a principle use)								P	P				<a href="#">Section 17.204.38</a>
Gas Station								C	C				<a href="#">Section 17.204.39</a>
Motel or Hotel								C	C	C			
Office, Research, Professional Services								P	P	P	P	P	
Personal Service Establishment							C	P	P	P			
Gun Ranges					C	C	C						<a href="#">Section 17.204.40</a>
Archery Range					P	P	P						<a href="#">Section 17.204.41</a>
Place of Assembly						C		P	P				<a href="#">Section 17.204.49</a>
Public or Self-Storage						C		P					<a href="#">Section 17.204.42</a>
Recreation, Private Indoor		C	C	C		C	C	P	P				<a href="#">Section 17.204.43</a>

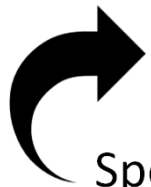


For each district, determine if the use is something you want to keep, eliminate, or allow through a different process.

# General Standards

## Section 17.803.03 BASIS OF DETERMINATION

- A. **Conformance with Requirements.** The applicant shall be required to establish by clear and convincing evidence that the applicable standards of this Chapter, the specific standards pertinent to each conditional use, including site plan review criteria set forth for applicable site development standards for specific uses set forth elsewhere in this Chapter (refer to Chapter [17.204](#), Development Standards for Specific Uses) have been met.
- B. **General Standards.** The Board of Adjustment shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards:
1. Compatibility with Adjacent Uses. The proposed conditional use shall be designed, constructed, operated and maintained to be compatible with uses on surrounding land. The site design shall minimize the impact of site activity on surrounding properties. In determining whether this requirement has been met, consideration shall be given to:
    - a. The location and screening of vehicular circulation and parking areas in relation to surrounding development.
    - b. The location and screening of outdoor storage, outdoor activity or work areas, and mechanical equipment in relation to surrounding development.
    - c. The hours of operation of the proposed use. Approval of a conditional use may be conditioned upon operation within specified hours considered appropriate to ensure minimal impact on surrounding uses.
    - d. The bulk, placement, and materials of construction of the proposed use in relation to surrounding uses.
  2. Comprehensive Plan. The proposed conditional use will be harmonious with and in accordance with the general objectives or with any specific objective of the town and county comprehensive plan.

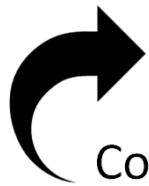


Specifically reference the comprehensive plan if you want to consider it in decision-making.

# Standards for Specific Uses

## Section 17.204.36 BED AND BREAKFAST

- A. **Bed and breakfast**, may be located in an, R-R, R-E, G-A, and N-C Districts with the following conditions, and any other specific conditions imposed by the Board of Adjustment:
1. Owner Occupied. The owner must reside at the site and provide proof of residency annually to the Zoning Administrator.
  2. Guests. A maximum of three guest units shall be permitted.
  3. Safety Items. Each facility shall have the following safety items:
    - a. Smoke alarms in each unit;
    - b. Two fire extinguishers, which shall be “abc” rating and one shall be located in the kitchen and one shall be located at main entrance/exit;
    - c. First-aid kit;
    - d. Emergency lighting and/or other safety devices as recommended by the fire chief.
  4. Food Licensing. Food licensing shall be mandated by Marathon County Health Department.
  5. Health and Safety. Home occupancy must meet state health and safety requirements.
  6. Signs. Signage shall be subject to Title 7, Signs.
  7. Limitation on Stay. The same guest or group of registrants shall not stay at the facility for a period of more than seven consecutive days or more than 14 total days within a given calendar year.
  8. Cause for Repeal of Permit. Failure to comply with these conditions and subject to Chapter 254.61 Wisconsin Statutes or other such agencies shall be cause for repeal of the conditional use permit.
  9. Trash. Shall provide central facilities for collection and disposal of trash.
  10. Facility must be ADA compliant.



Consider adding detailed standards for specific uses. Legislatively enacted standards are easier to defend than conditions attached during permit review.



# Purpose Statements

## Chapter 17.803

## Conditional Use Permits

### Section 17.803.01 PURPOSE

- A. **Purpose.** Certain uses are of such a nature or their effects are as dependent upon specific circumstances as to make impractical the determination in advance of where and when and under what conditions they should be permitted. Provision has been made in this chapter for the determination of such uses as conditional uses. Conditional uses are land uses listed as such in [Table 3](#) Uses Permitted by District. They may be established in such district only upon approval by the Board of Adjustment.

The procedures and standards in this Chapter are intended to provide a consistent and uniform method for review of conditional use permit proposals. These review procedures and standards are intended to accomplish the following purposes:

1. Ensure full compliance with the standards contained in this ordinance and other applicable local ordinances, and state and federal laws.
2. Achieve efficient use of the land.
3. Prevent adverse impact on adjoining or nearby properties.
4. Protect natural resources.
5. Facilitate development in accordance with the County's land use objectives per the Comprehensive Plan.



Analyze statements describing the purpose of the zoning ordinance, the purpose of specific zoning districts, and the purpose of specific regulations. They should provide support for conditions you are likely to attach.

# Permit Review



Review proposal  
against ordinance  
criteria



Determine credibility  
of information  
presented



Determine if you will  
grant or deny based on  
substantial evidence



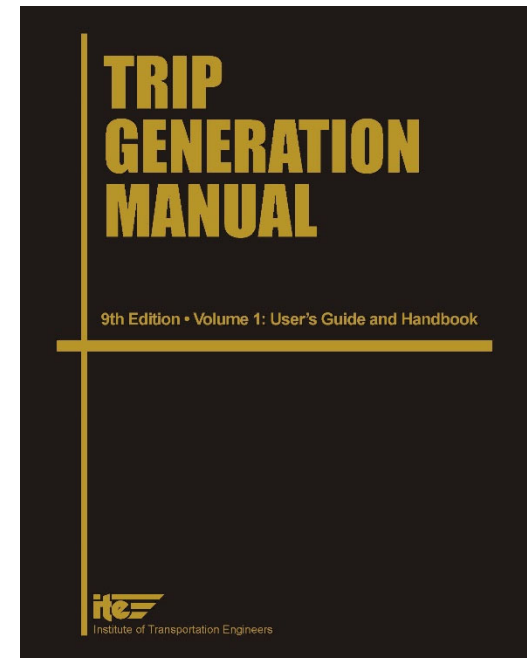
Make sure conditions  
imposed are reasonable,  
measurable, relate to the  
ordinance purpose, and  
are supported by  
substantial evidence



Create an adequate  
record of your decision  
to provide support if the  
decision is appealed

# Is this Reasonable, Measurable, Evidence-based?

Local government requires traffic impact analysis with projections based on ITE trip generation rates.



# Is this Reasonable, Measurable, Evidence-based?

Local government requires that 100% of stormwater must be retained on site.



## 2017 WI Act 243

Construction site erosion control and stormwater management ordinances –

May not require more than 90% of predevelopment runoff to be retained on site.



# Is this Reasonable, Measurable, Evidence-based?

Certified wetland delineator verifies location of wetland on the property.





# Reasonable, Measurable, Evidence-based?

Local government requires building or landscaping to be harmonious with surrounding properties.



Aesthetics are a recognized public concern, but more powerful when tied to a public purpose such health, safety, or economics.

Create standards that are measurable and enforceable.

# Reasonable, Measurable, Evidence-based?

Neighbor appears in opposition at public hearing citing decreased property values.



Property values are a legitimate public purpose, but are not guaranteed by zoning.

How do you measure?  
Is the loss speculative?  
Is it a taking?  
Can you craft conditions to minimize impacts?



# Limits on Exactions

1. Essential Nexus – address expected harmful project impacts
2. Rough Proportionality – conditions proportional to impact



(U.S. Supreme Court in Nollan/Dolan)

# Reasonable, Measurable, Evidence-based?

368 people speak on record at the public hearing. Most oppose. Can you deny the permit based on opposition?



- Not a popularity contest.
- Weigh the credibility of information presented.
- Provide substantial evidence (facts and information) supporting your decision to grant or deny the permit.
- Cite specific standards and evidence you relied upon.
- Postpone if more time or information is needed.

# Application and Decision Forms

## Decision

(See Handout)

If an applicant for a conditional use permit meets, or agrees to meet, all of the requirements found in the zoning ordinance and all conditions imposed on the permit, the local government is required to grant the permit.

Based on the above findings of fact, conclusions of law, and the record in this matter, the permit is:

☐ Approved, with the conditions stated above.

☐ Denied, for the following reasons:

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---

Signature of local government

---

Date



# Zoning – Relief Mechanisms

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

# Zoning Amendments

Map amendment – change to district boundaries

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

## Legislative decision

- Must be reasonable and constitutional
- Consistent with Comprehensive Plan
- Other standards found in Zoning Ordinance

# Sample Rezoning Standards

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

# Consistency Requirement

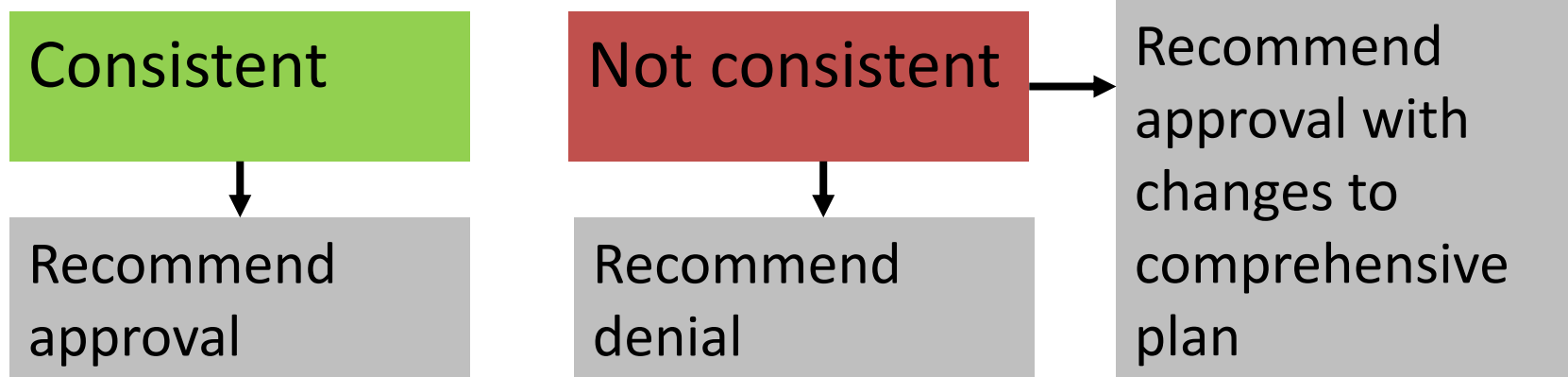
- Beginning Jan. 1, 2010, **new or amended** zoning, land division and official mapping **ordinances** must be consistent with an adopted comprehensive plan
- **Consistent means** “furthers or does not contradict the objectives, goals and policies contained in the comprehensive plan”

*(2009 Wisconsin Act 372)*

# Determining Consistency

## Rezone Example:

1. Look to future land use map
2. Look to text of comprehensive plan
3. Determine if proposal is consistent with plan



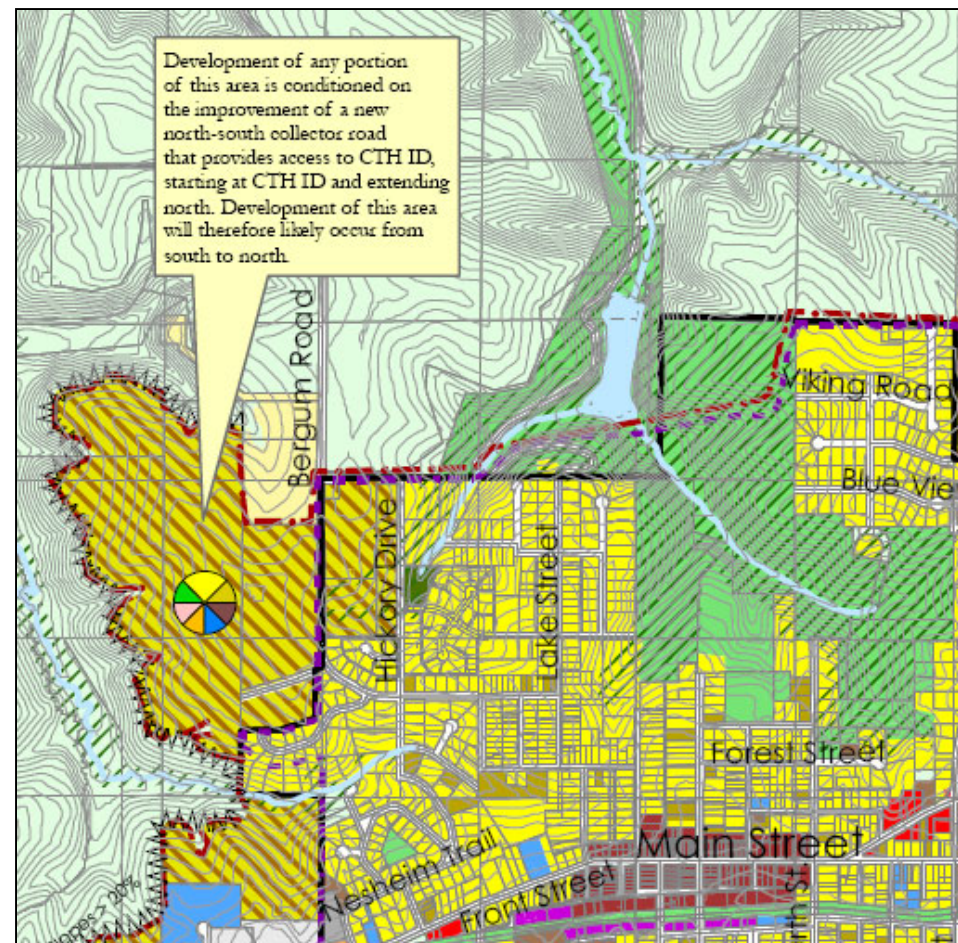


# Consistency Examples

## Village of Mount Horeb – Future Land Use Map

Plan specifies conditions under which growth may occur:

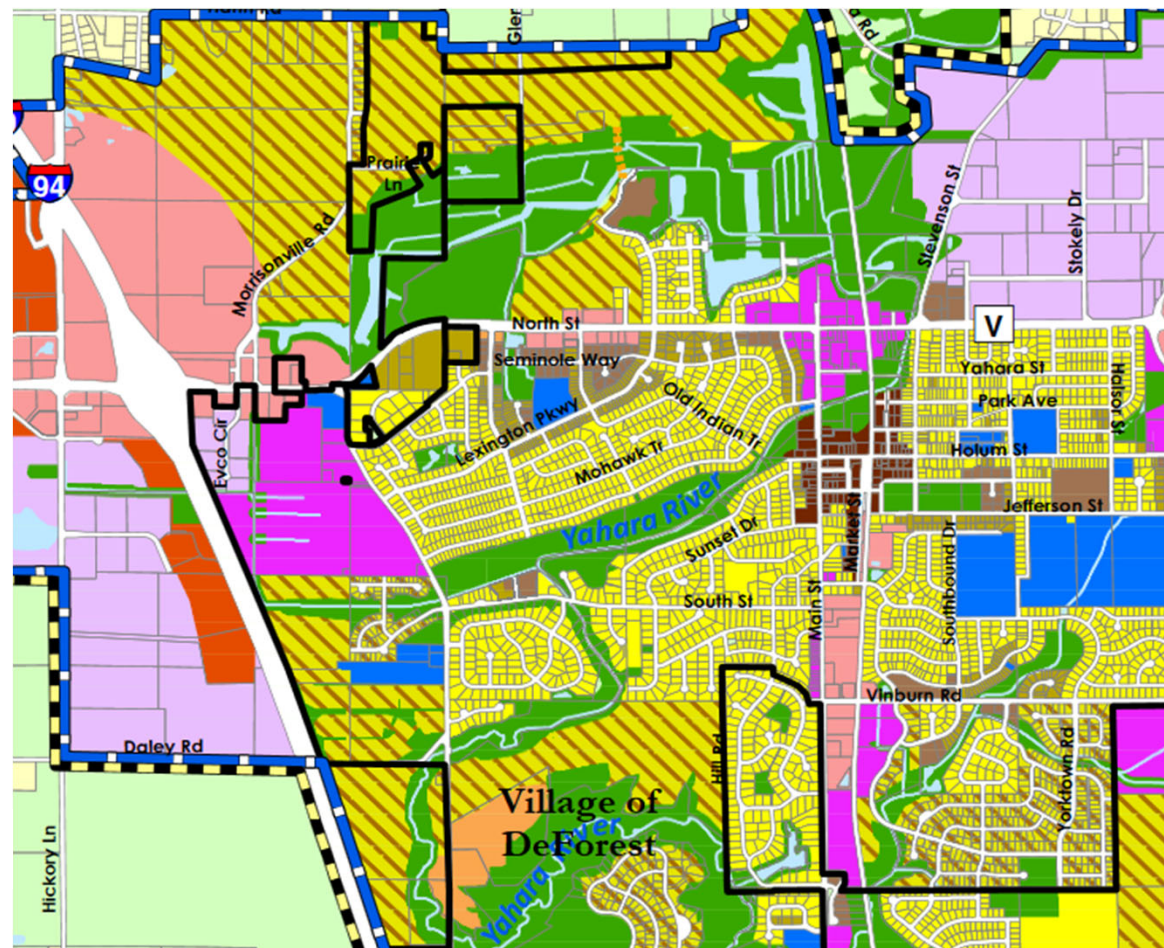
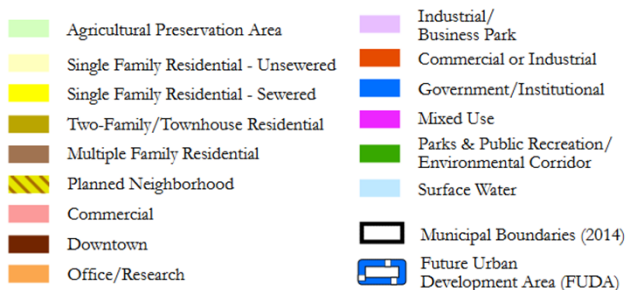
*“development of this area is conditioned on the improvement of a new north-south collector road”*



# Consistency Examples

## Village of DeForest – Future Land Use Map (2016)

Future land uses extend beyond municipal boundaries to cooperative boundary lines.





# Consistency Examples

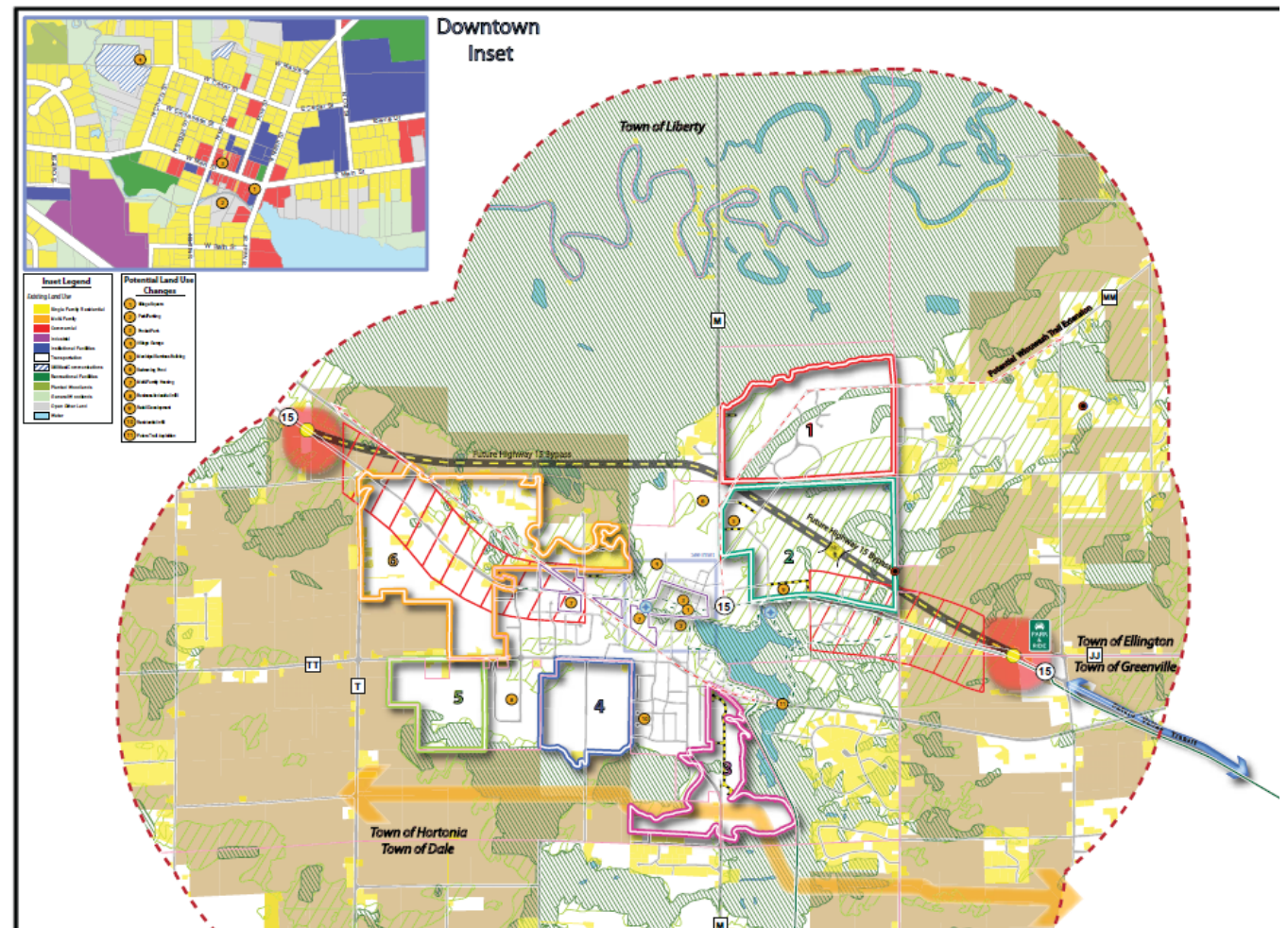
## Village of DeForest - text provides guidance for zoning

Future Land Use Category (shown on Map 6-1)	General Description of Land Uses Allowed	Typical Implementing Zoning Districts	Lot Size and/or Density Range	Development Policies (see also Village zoning, subdivision, stormwater management, official map, and other ordinances)
Commercial	High-quality indoor retail, commercial service, office, health care, and institutional buildings on sites with generous landscaping and modest lighting and signage; served by a public sewer system (except for A-B district)	B-2 General Business (preferred) B-3 Highway Business PUD Planned Unit Development A-B Agricultural Business (in ETZ and other rural settings)	Per associated zoning district requirements	<ol style="list-style-type: none"> <li>1. In addition to zoning requirements, meet commercial design policy in the Economic Development chapter.</li> <li>2. Time rezoning to when public sanitary sewer and water services available and a specific development proposal is offered.</li> <li>3. <del>Assure that development provides access and an attractive rear yard appearance and existing and future development behind these sites.</del></li> <li>4. Require developments to address off-site traffic, environmental, and neighborhood impacts.</li> </ol>
Downtown	Mix of specialty retail, restaurants, service, office, institutional, and mainly upper-story residential uses, in a pedestrian-oriented environment and mixed use buildings, with on-street parking, minimal setbacks, and buildings compatible with a downtown setting	B-1 Central Business District (preferred) PUD Planned Unit Development	See Chapter 3: Downtown for density and other site utilization recommendations for the Downtown and specific sites within it Also see B-1 requirements	<ol style="list-style-type: none"> <li>1. Encourage uses most appropriate for the Village downtown area to develop or remain there.</li> <li>2. Pay special attention to design and scale when considering approvals in the Downtown.</li> <li>3. Preserve the architectural and historic character of the core downtown historic buildings.</li> <li>4. See the Downtown chapter for more specific land use, redevelopment, and revitalization recommendations.</li> </ol>
Office/Research	High-quality indoor professional office, research, development, and testing uses, health care facilities and other institutional uses, support	O-R Office and Research District (preferred) PUD Planned Unit	Per associated zoning district requirements	<ol style="list-style-type: none"> <li>1. Design and approve developments within Office/Research areas to result in higher-end "office park" or "office/research campus" setting.</li> <li>2. Encourage warehousing and manufacturing uses to locate</li> </ol>

# Consistency Examples

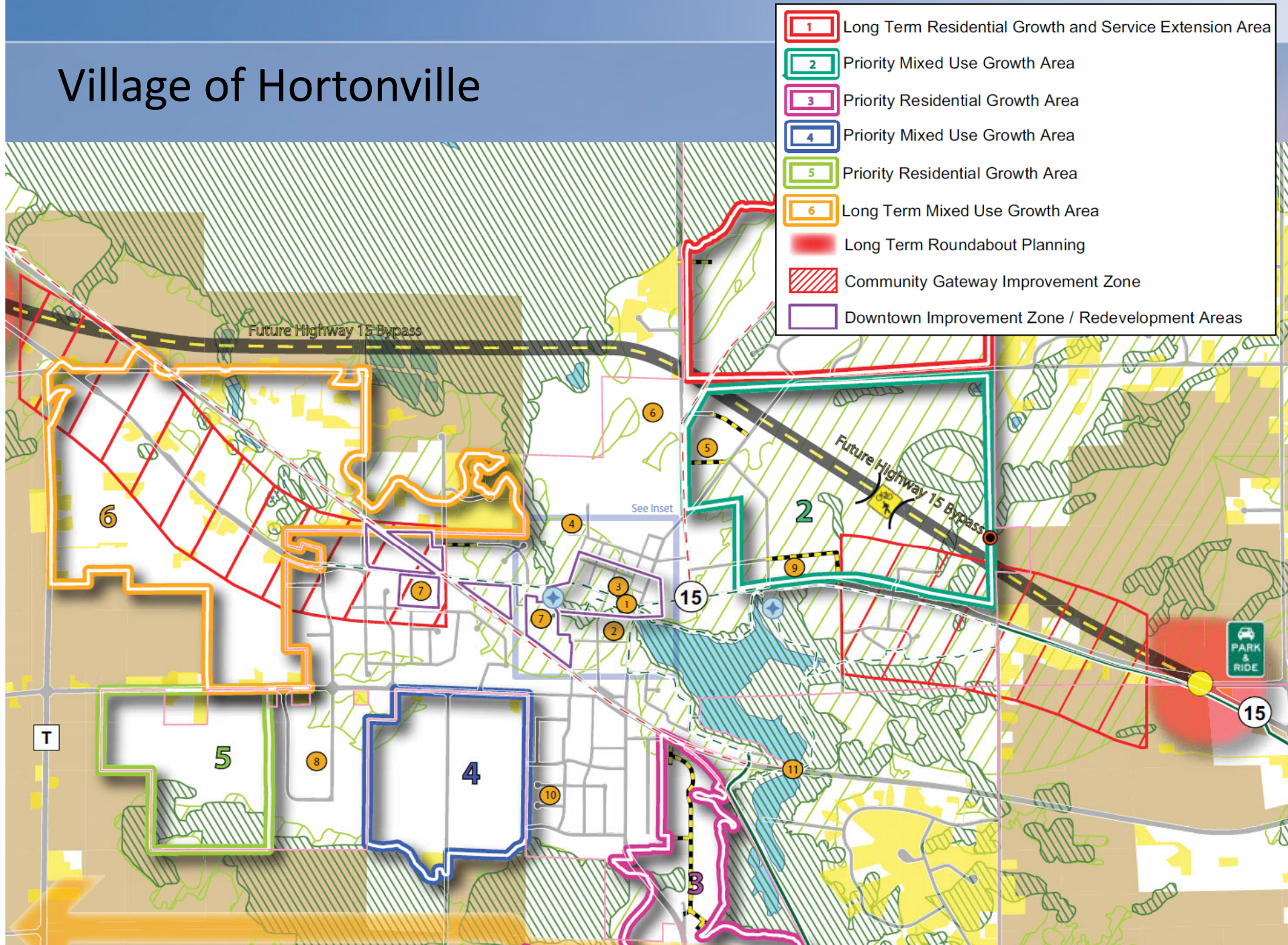
- Village of Hortonville – Future Land Use Map

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



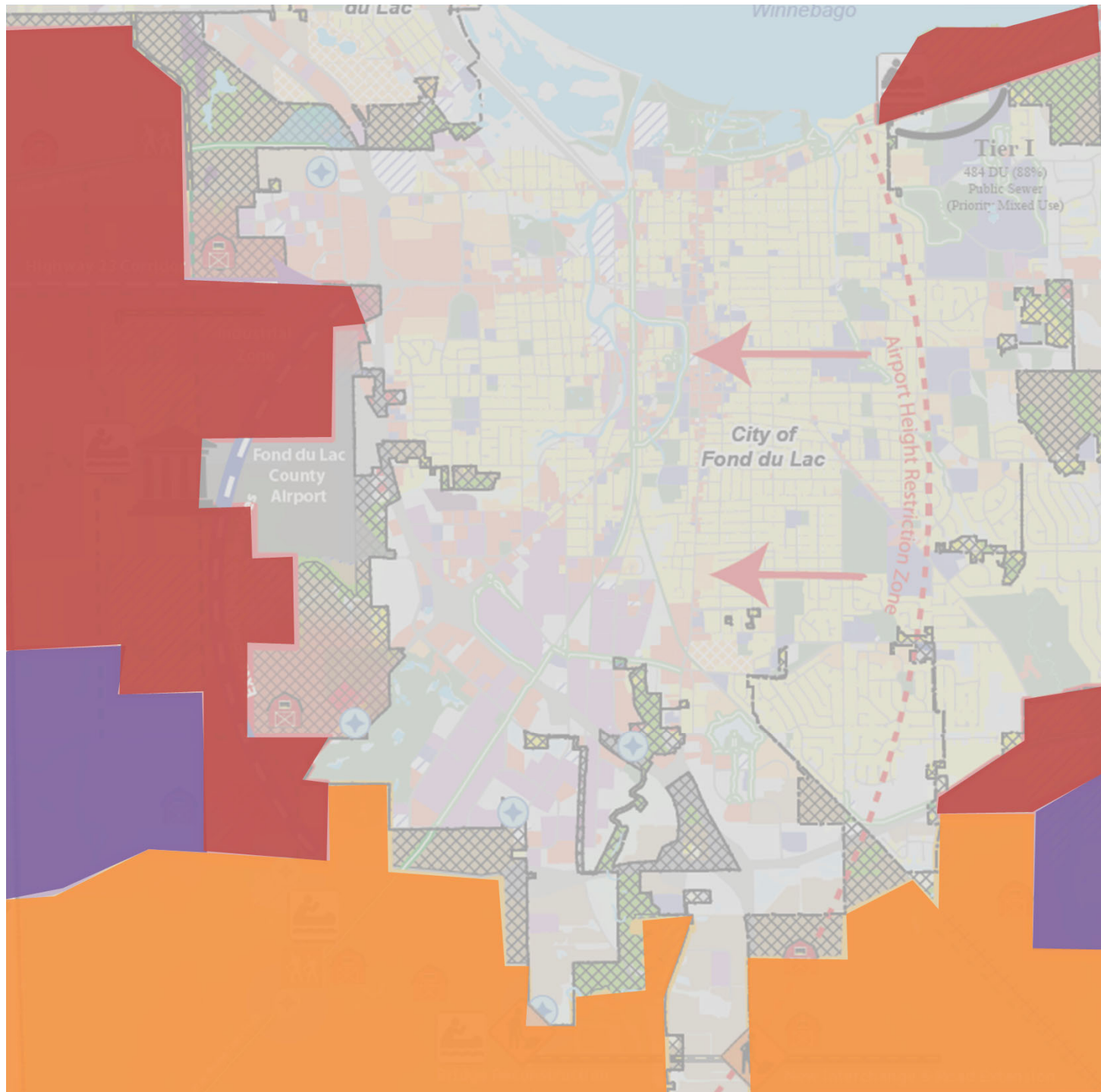


# Village of Hortonville





## T. Fond du Lac Future Land Use 2040



 Growth Agreement Areas

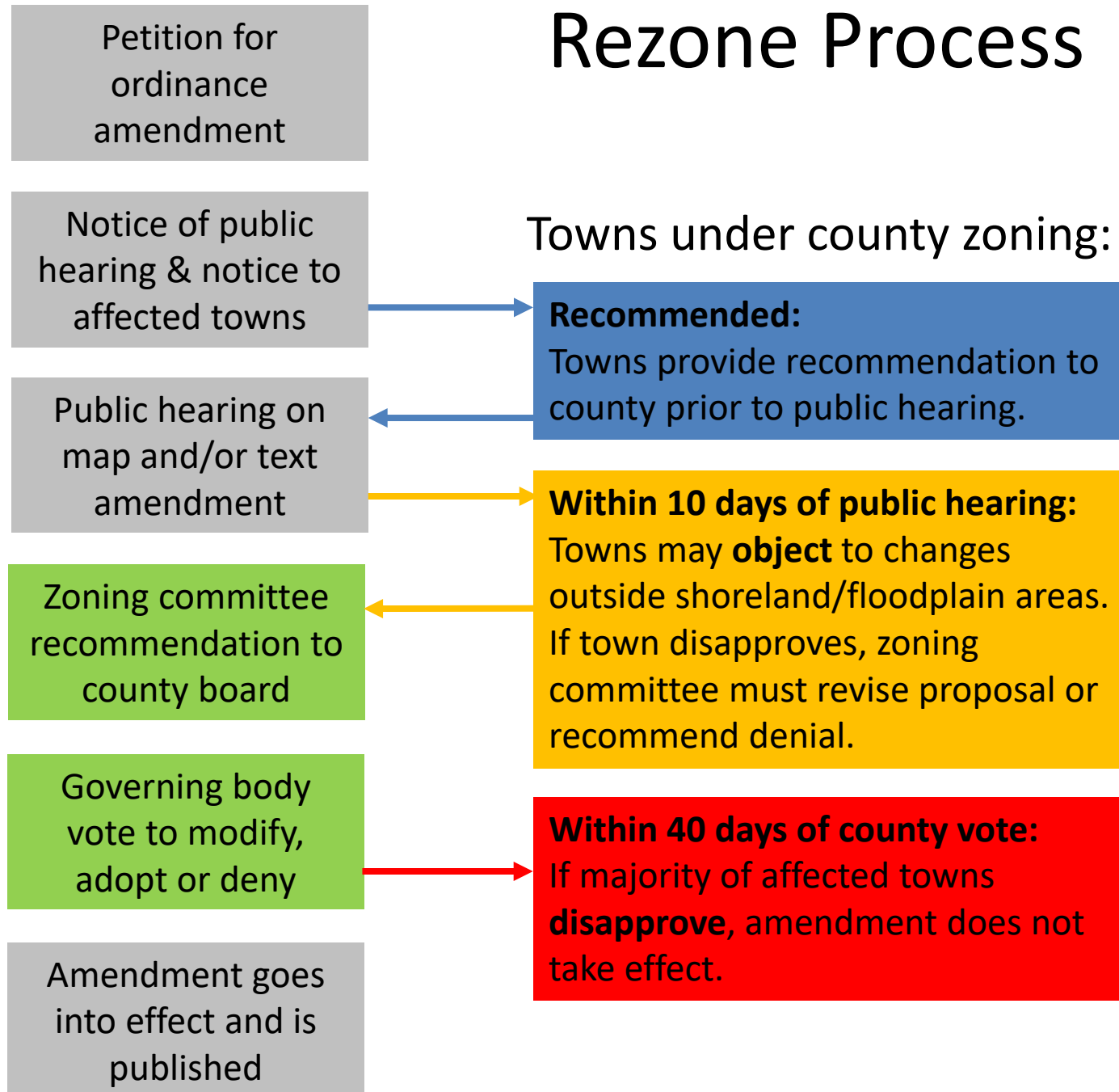
## From Marathon County and Town Comprehensive Plans:

Each local jurisdiction must make land use decisions that are consistent with their own comprehensive plan. The decision to approve a zoning change must be based on the adopted comprehensive plan, and specifically, the future land use map.

If the requested zoning is consistent with the land use designation on the property it should be approved, unless unique circumstances indicate the rezoning would negatively impact surrounding properties or the community.

If the requested zoning is not consistent, the community should consider denying the request. If the community believes the requested zoning is appropriate in the specific location and would benefit the community, the change can be approved, but the land use map should be amended to establish land use and zoning consistency.

# Rezone Process



# Recommendations

**PIERCE COUNTY WISCONSIN**

**DEPARTMENT OF LAND MANAGEMENT & RECORDS**

Zoning: 715/273-6747 Planning: 715/273-6746 Fax: 715/273-6864

Pierce County Courthouse

414 W. Main Street P.O. BOX 647

Ellsworth, Wisconsin 54011

## Town Recommendation Form

**Request:** \_\_\_\_\_ Conditional Use Permit \_\_\_\_\_ Plat Approval – Concept, Preliminary, Final (Circle One)  
\_\_\_\_\_ Map Amendment - (Rezone) \_\_\_\_\_ Other- \_\_\_\_\_

**Applicant/Agent:**

Name \_\_\_\_\_

Site Address (if applicable) \_\_\_\_\_

**Property Description:** \_\_\_\_\_ ¼ of the \_\_\_\_\_ ¼, Section \_\_\_\_\_, T \_\_\_\_\_ N, R \_\_\_\_\_ W, Lot \_\_\_\_\_, Block \_\_\_\_\_,

Subdivision \_\_\_\_\_ Town of \_\_\_\_\_

Computer # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Parcel # \_\_\_\_\_

Zoning District \_\_\_\_\_ Acreage \_\_\_\_\_

A town recommendation is required as part of the application for a rezone (map amendment) or a conditional use permit. This recommendation is necessary whether a town has adopted a comprehensive plan or has not. Pierce County will seek to further each Town's planning goals when considering the establishment of conditionally permitted uses and when considering approval of a request for a rezone or map amendment.

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