

Zoning Fundamentals



May 3, 2022
noon – 1pm

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Extension
UNIVERSITY OF WISCONSIN-MADISON



Outline

1. Zoning background
2. How does zoning work?
3. Relief mechanisms
4. Nonconformities
5. Appeals
6. Resources

Poll

What is your role/position related to zoning?

- Elected official
- Plan commission or zoning committee
- Zoning board of adjustment or appeals
- Zoning staff
- Interested person
- Other

How many people are watching from your site?

- 1
- 2
- 3
- 4
- 5
- More than 5

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History and Purposes of Zoning

Guiding Document



Comprehensive Plan

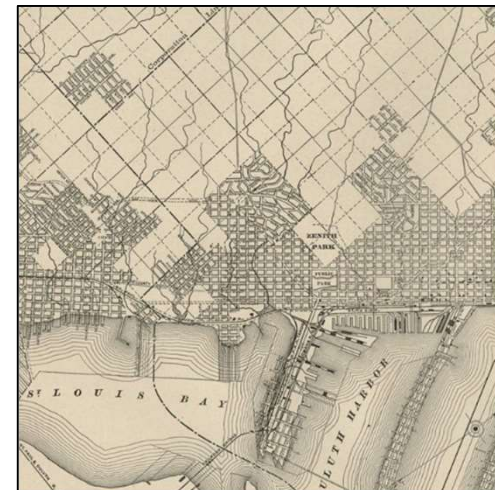
Regulatory Tools to Implement the Plan



Zoning Ordinance



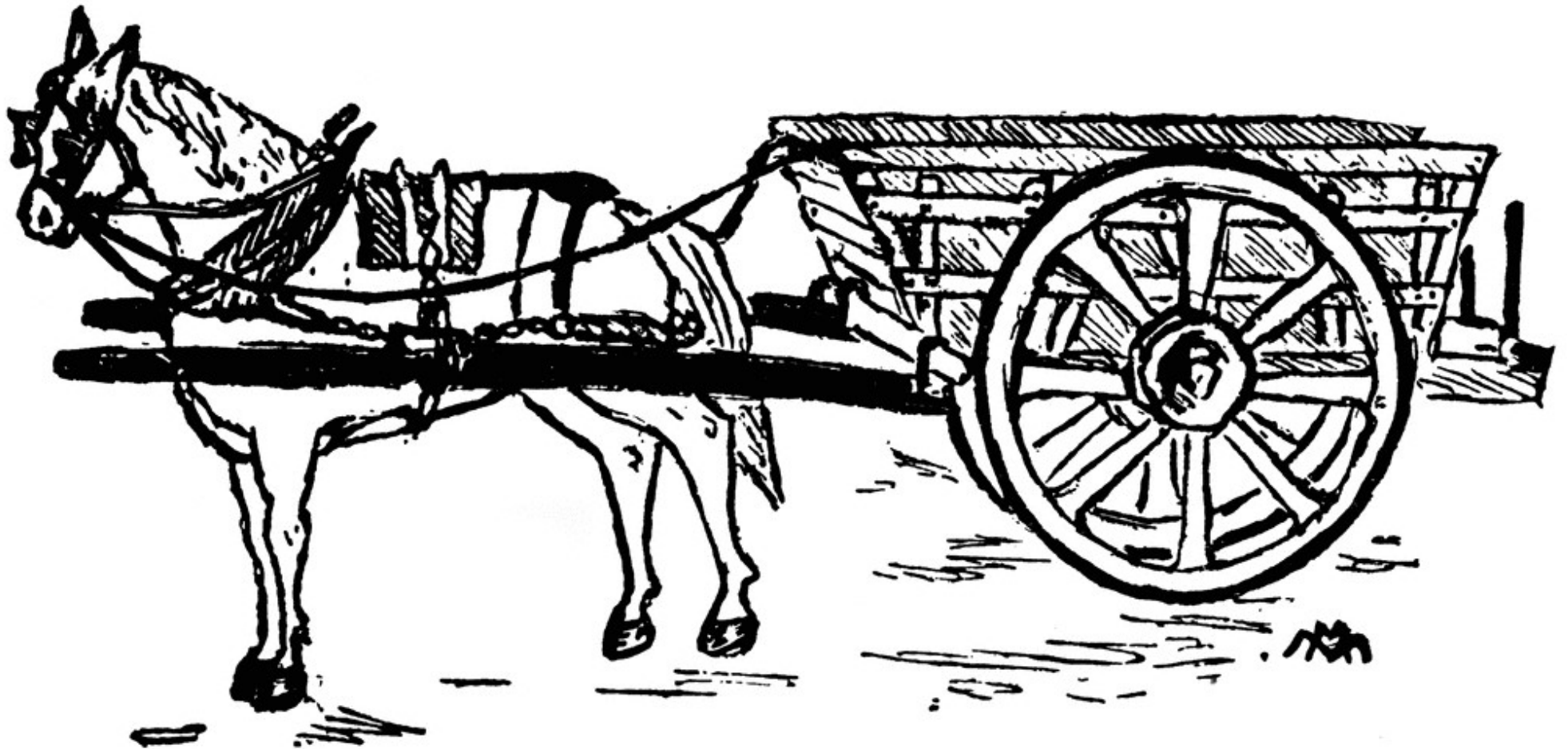
Subdivision Ordinance



Official Map

Comprehensive plan = goals

Zoning = way to achieve goals

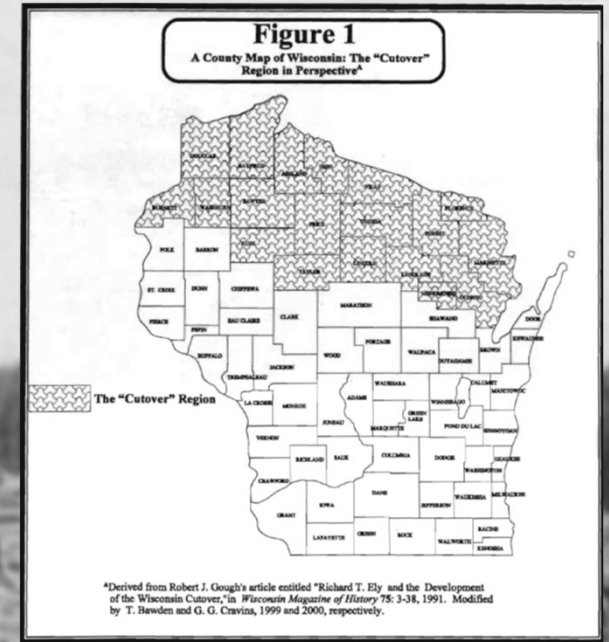


Urban Zoning

- Milwaukee adopts first zoning ordinance in Wisconsin in 1920
- Separated industrial uses from residential
- Milwaukee County Zoning Ordinance, passed in 1927, was meant in part to prevent building construction in low lying areas prone to flooding



History of Rural Zoning in Wisconsin



"Timber living and dead, inextricably intermingled . . ."

Prize Winning Cabbage
Burnett County, 1895



GXVI

"Farm Family with Copious Produce" Marinette County, 1895



XCVI

467

V6B22

4-19-57



3-09-57



Abandoned.

Courtesy W. A. Rowlands

Key Dates in Wisconsin



1920 – First Wisconsin zoning ordinance created by City of Milwaukee

1923 – Zoning upheld by Wisconsin Supreme Court

1929 – Wisconsin Legislature authorizes zoning to regulate uses in rural areas – three zones: farming, forestry, recreation

1933 – Oneida County adopts first comprehensive rural zoning ordinance in the United States

1950-1990 – Increasing development pressure (10,000 road miles, loss 4M acres farmland, 60% undeveloped lakes, forest fragmentation)

1968 – Local governments required to administer minimum shoreland / floodplain zoning regulations

1998 – Less than 1/3 of local governments had a land use plan

1999 – Wisconsin adopted Comprehensive Planning Law and grant program

2010 – Zoning must be consistent with a comprehensive plan

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How Does Zoning Work?

Zoning

Counties

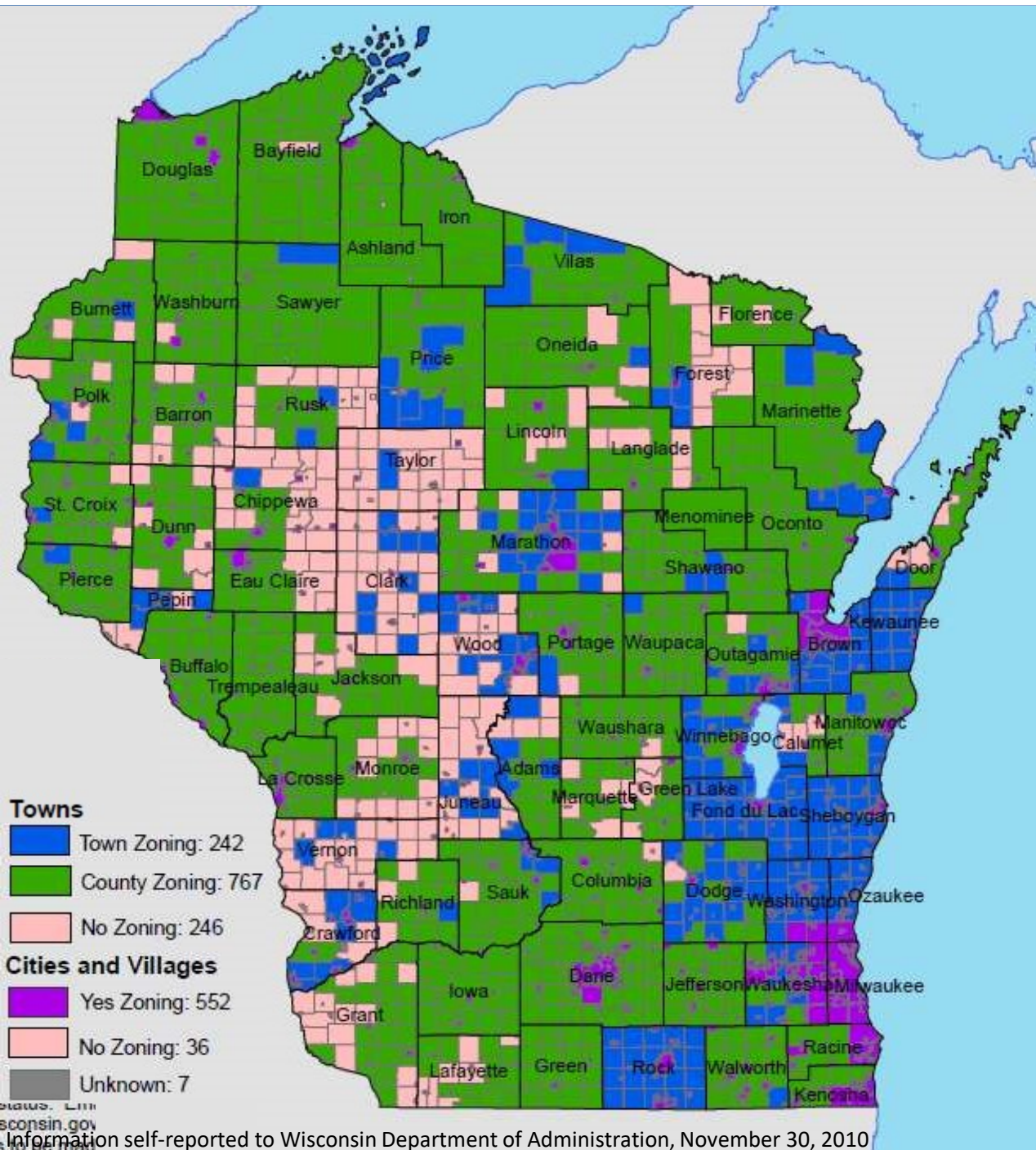
- May adopt general zoning in unincorporated areas
- Required to administer shoreland/wetland zoning

Towns

- May adopt general zoning (if no county zoning or with county approval following adoption of village powers)

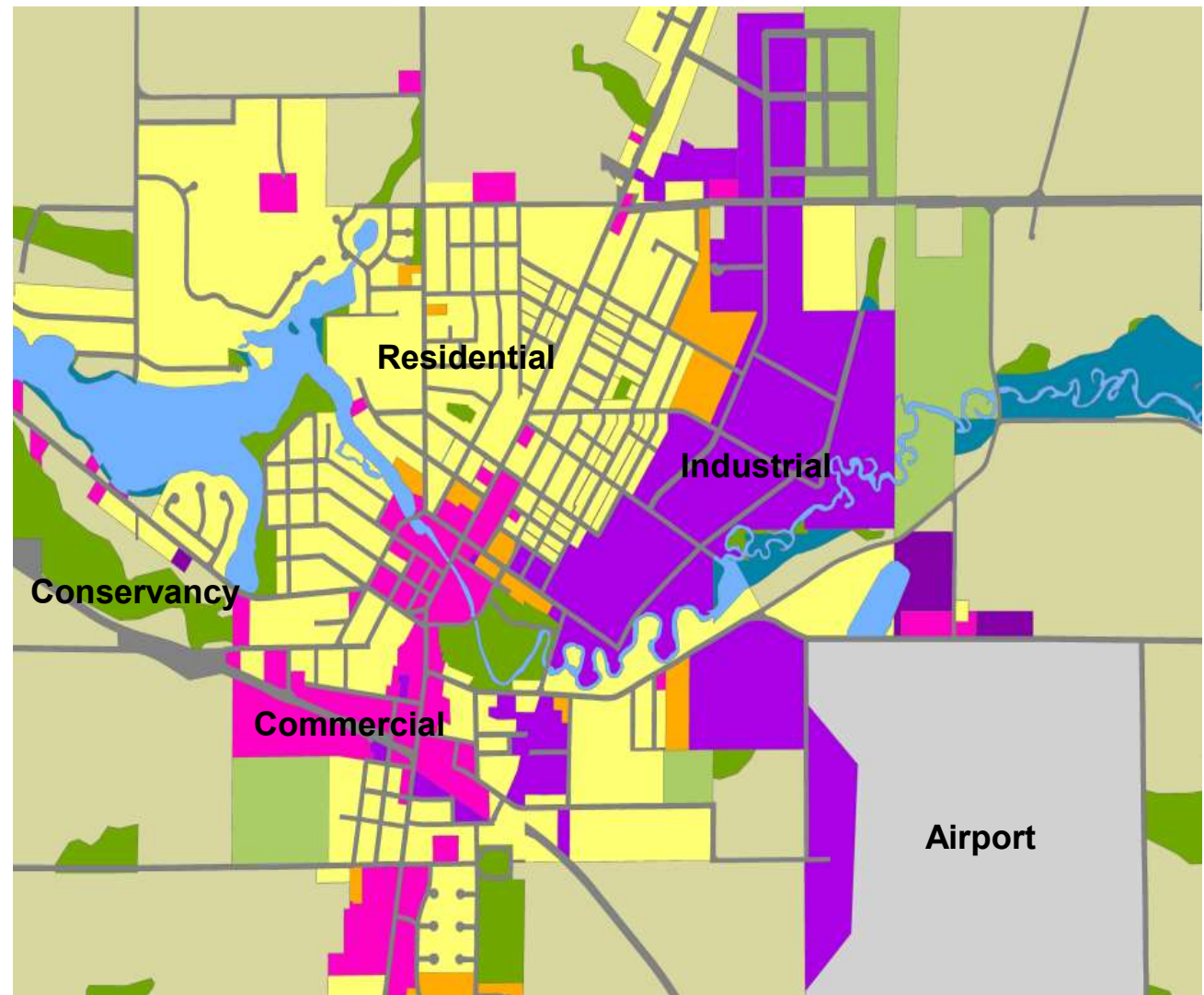
Cities/Villages

- 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



A zoning ordinance contains two parts:

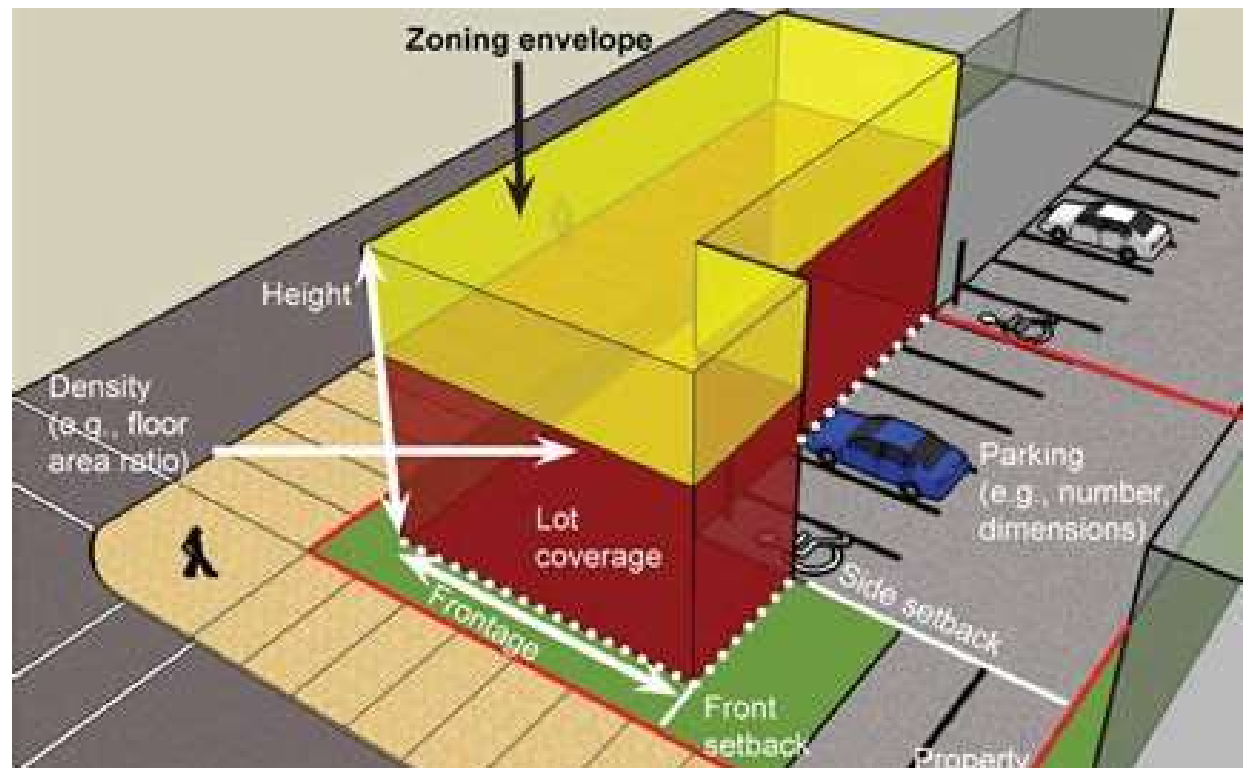
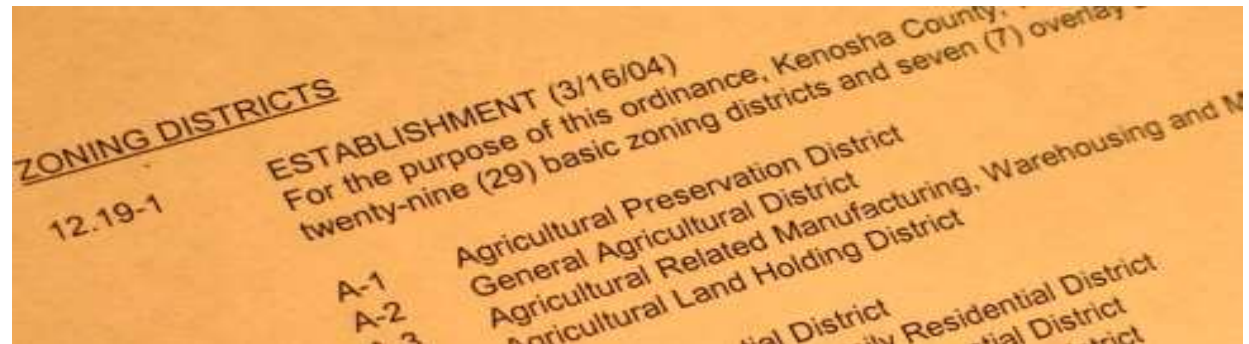
Zoning Map
divides the
community
into districts



A zoning ordinance contains two parts:

Zoning Text

- purposes
- uses allowed in each district
- dimensional standards i.e. lot size, density, setbacks, etc.
- requirements related to parking, signage, landscaping, etc.
- authority and procedures



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



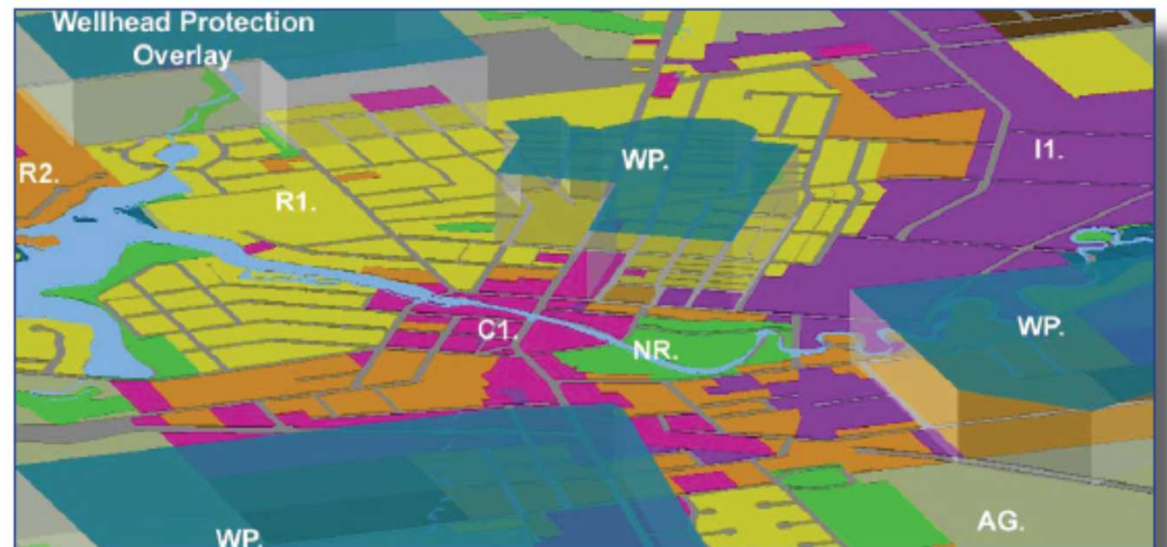
Sample May 11 webinar

P Permitted
 C Conditional
 - Prohibited

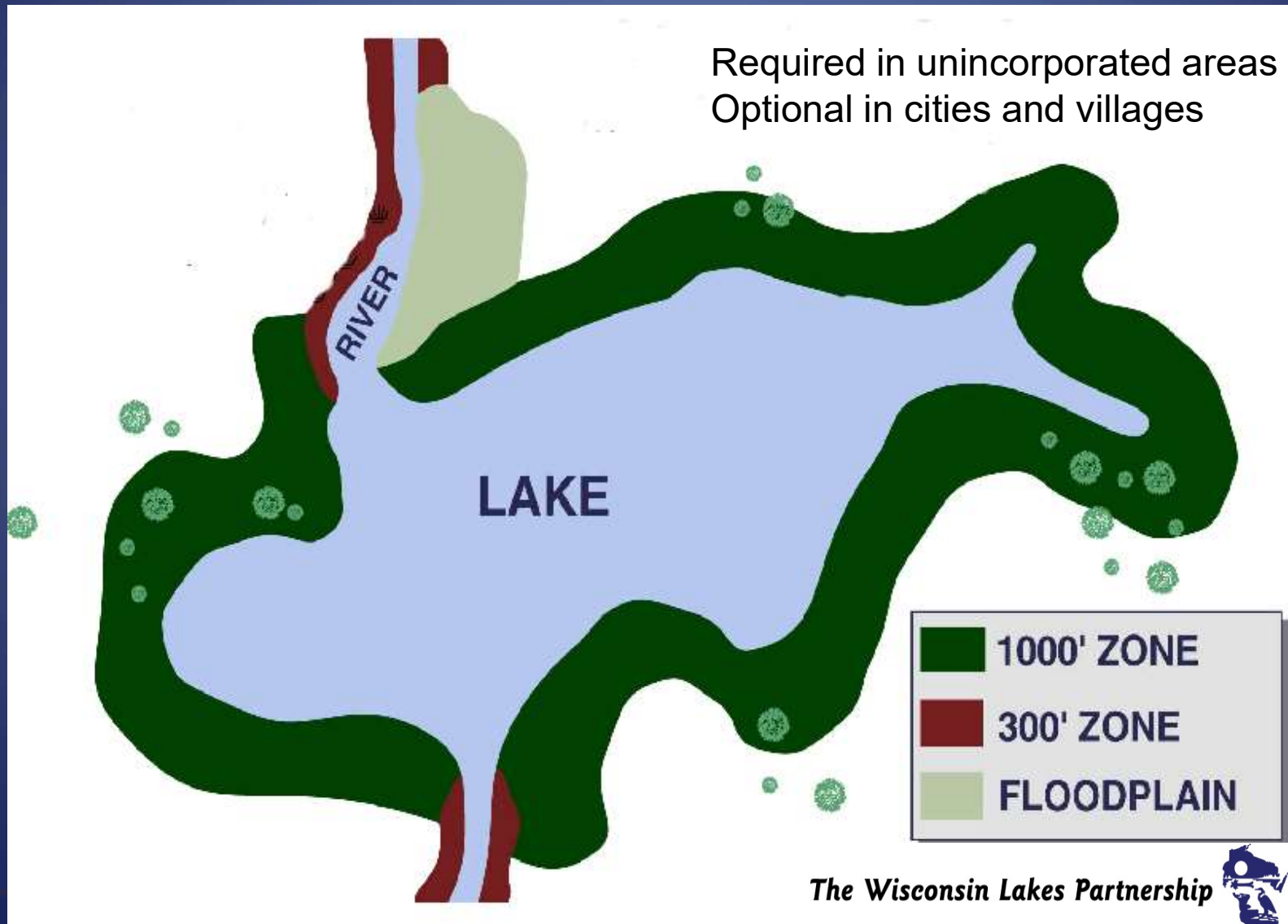
Zoning District	A1 Intense Agriculture	A2 Light Agriculture	RR Rural Residential	R1 Single Family	R2 Multi Family	C1 Commercial
Livestock facility	P	C	-	-	-	-
Residential poultry and beekeeping	P	P	P	C	C	-
Agricultural tourism	C	C	C	-	-	C
Agriculture-related business	P	P	C	-	-	C
Roadside stand	P	P	P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

Overlay Zoning

- A special zoning district, placed over an existing base zone(s), which creates special provisions in addition to those in the underlying base zone to protect a specific resource
- Examples:
 - Shoreland zoning
 - Floodplain zoning
 - Wellhead protection
 - Airport overlay
 - Bluff zoning
 - Historic overlay
 - Transit corridor



Shoreland zoning applies near lakes & rivers



Purposes of shoreland zoning

- Prevent and control water pollution
- Protect spawning grounds, fish and aquatic life
- Reserve shore cover and natural beauty
- Control building sites, placement of structures and land uses

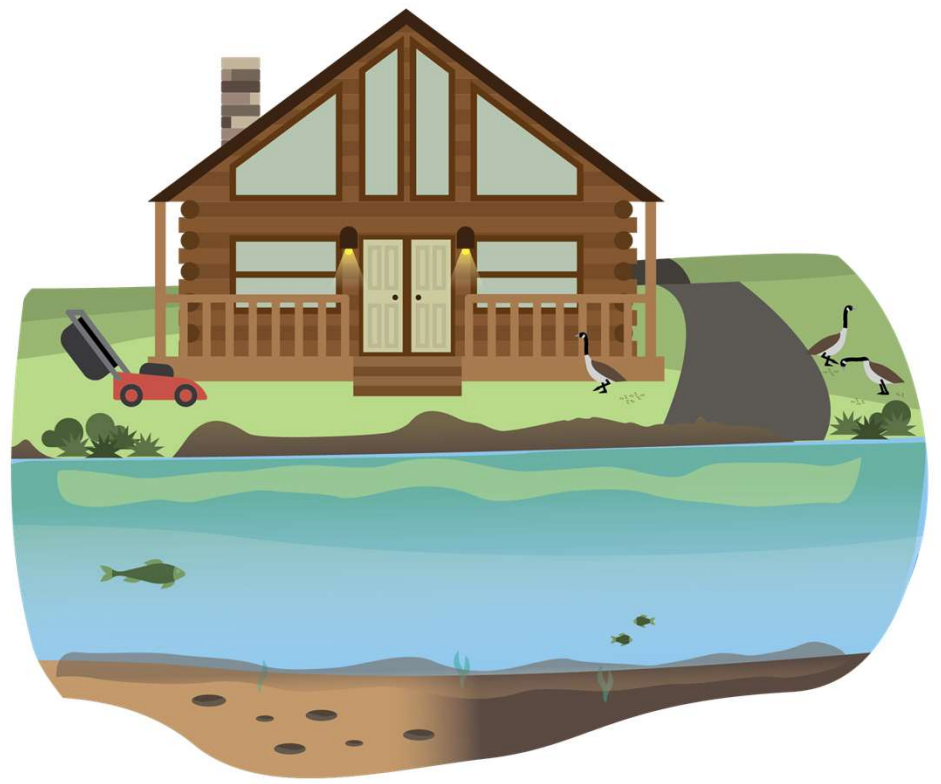
s. 281.31 Wis. Stats.



Shoreland zoning

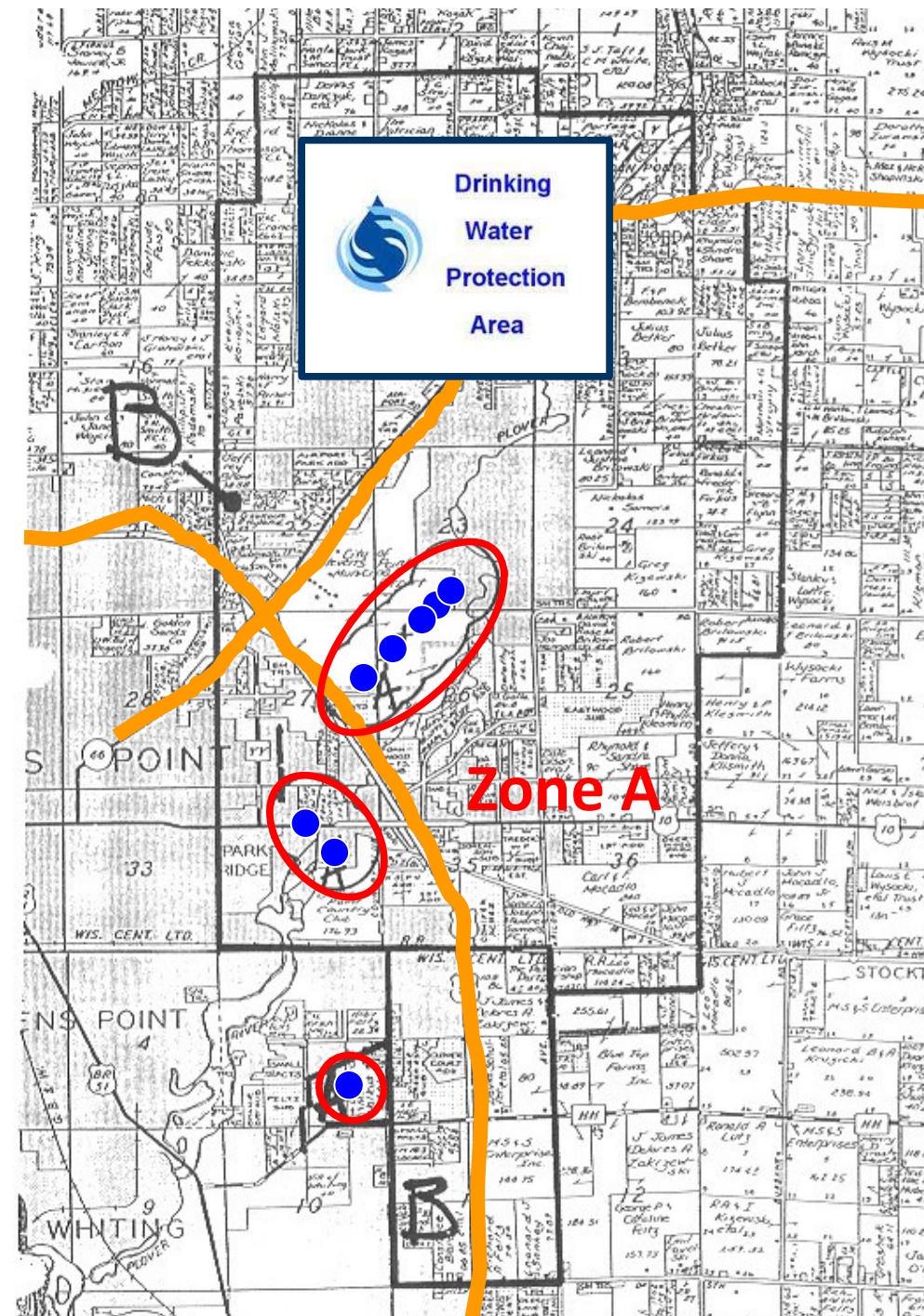


No shoreland zoning



Wellhead Protection Ordinance

- Counties, cities, villages, and towns have authority to adopt ordinances to protect groundwater from Wisconsin Statutes
- Municipalities can protect the health of their residents and save \$ by keeping their drinking water safe



Floodplain Zoning

Purposes: protect property owners and emergency service providers



Flooding

In Wisconsin we're seeing:

- more frequent and more intense heavy rainfalls
- a noticeable uptick in the number of flooding events

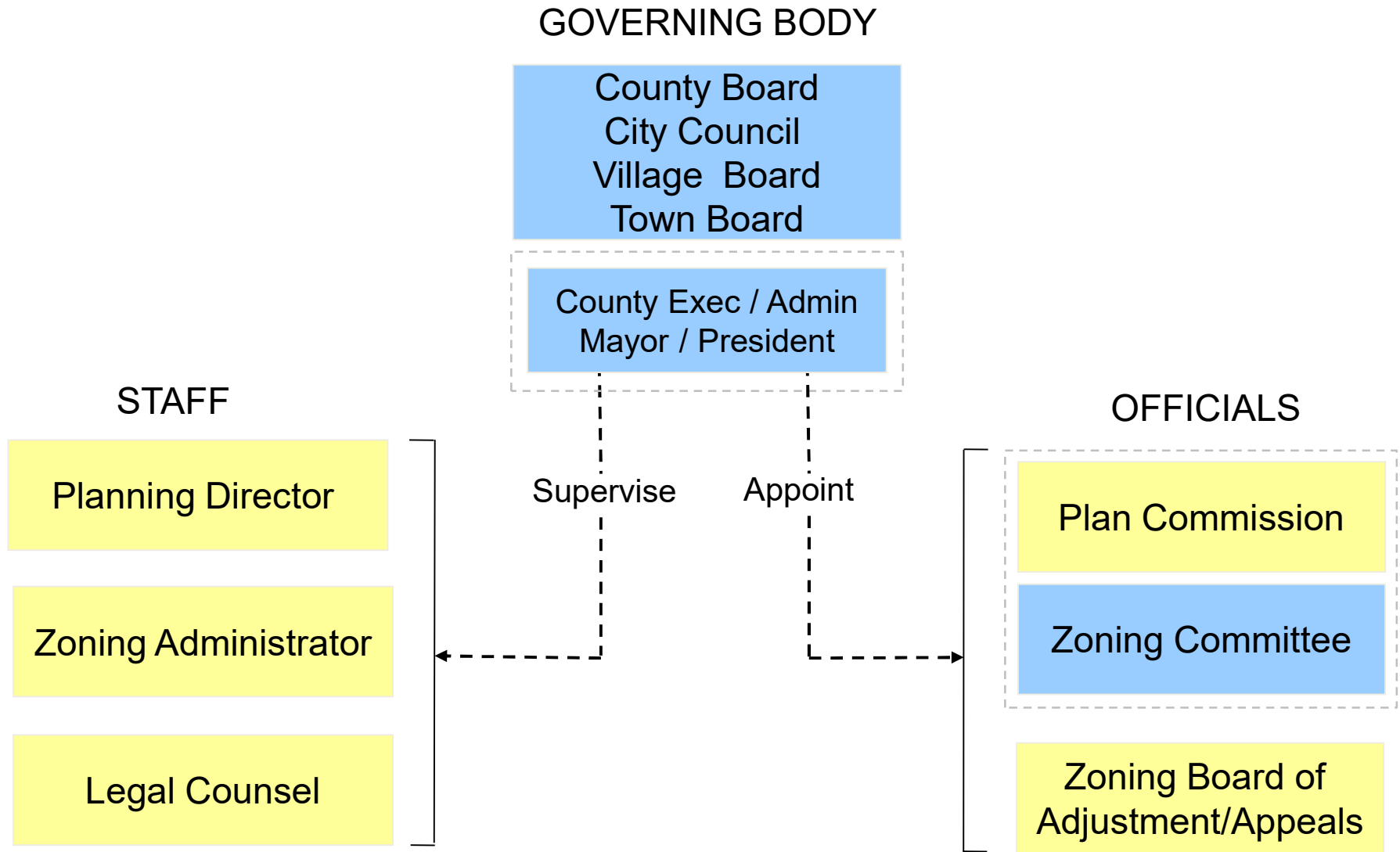
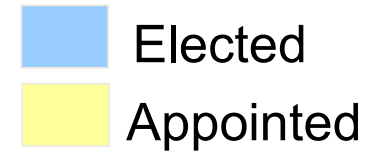


Poll

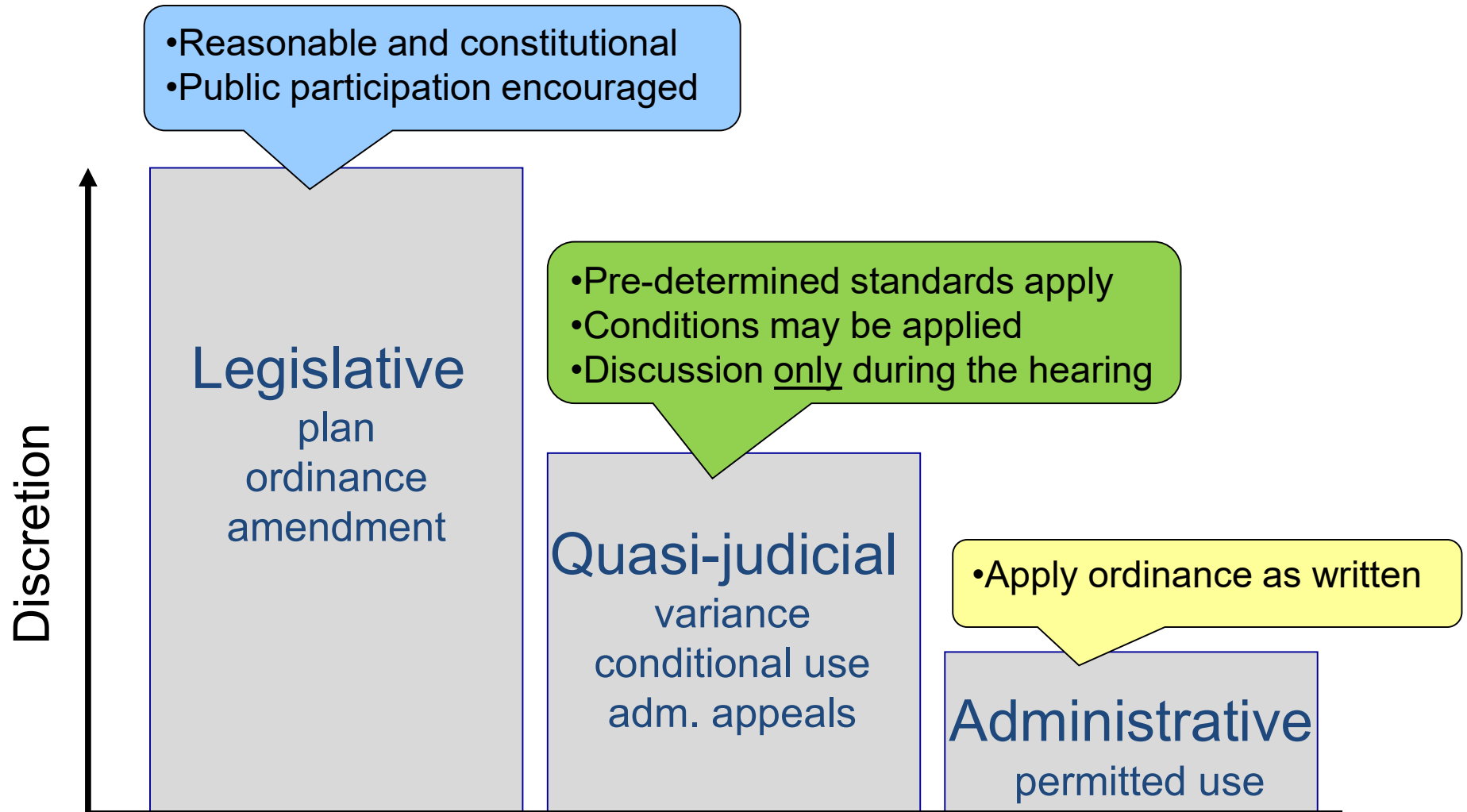
What are the key reasons that your community has zoning? (choose all that apply)

- Protect public health
- Protect public safety
- Provide safe drinking water
- Protect property owners & emergency service providers
- Protect lakes, streams and fisheries
- Protect property investments
- Avoid land use conflicts

Local Government Structure



3 Types of Decisions



Decisions



Legislative



Quasi-judicial



Administrative

Governing Body



Plans, ordinances,
amendments

Conditional
uses?

Planning and
Zoning Staff



Technical support

Permitted uses

Plan Commission



Recommendations

Conditional
uses?

Zoning Board



Variances

Administrative
appeals

Conditional
uses?

Relief Mechanisms

1. **Variance** – allows a property owner to do something prohibited by the zoning ordinance (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 (Rezone)** – change to the zoning ordinance (adopted by governing body with advisory recommendation from plan commission)



Variances

Variations

A variance allows a property owner to do something prohibited by the zoning ordinance

- Provide relief in limited, unusual circumstances
- Not meant to provide general ordinance flexibility

Variances

Area variances allow modification of a physical, dimensional or locational requirement (such as setback, frontage, height, bulk or density)

Use variances permit a landowner to put property to an otherwise prohibited use. Use variances are prohibited in shoreland zoning.

Variations

May 5 webinar



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. not contrary to public interest

For floodplain variations, the applicant must show they meet an additional 13 standards.

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Nonconformities

Zoning – Nonconformities

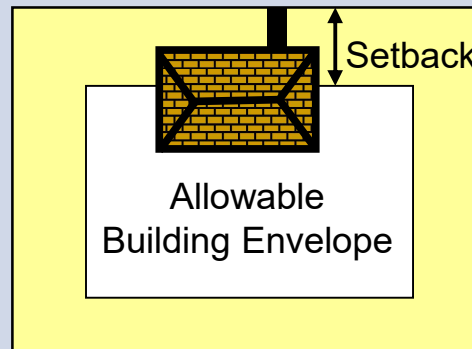
Zoning nonconformities were legally established prior to adopting or amending a zoning ordinance but do not comply with current provisions. There are 3 types:

1. Use



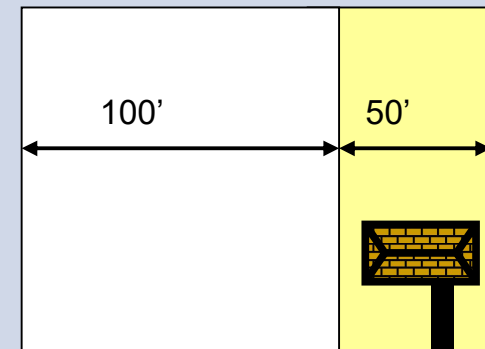
Ex. industrial use in a residential zoning district

2. Structure



Ex. structure does not meet setback requirements

3. Lot

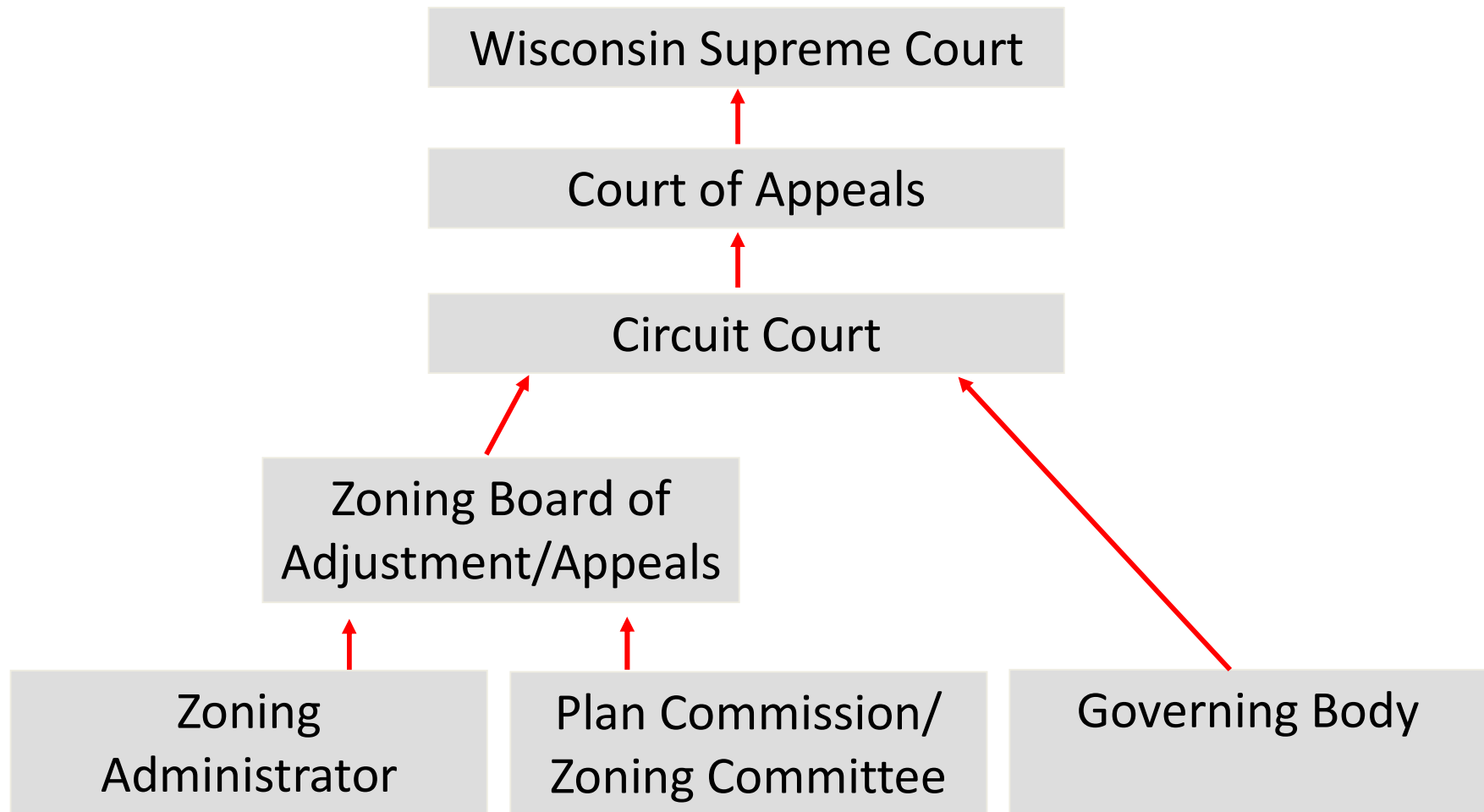


Ex. lot does not meet dimensional requirements

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Appeals and Legally Defensible Decisions

Appeal of Zoning Decisions



Legally Defensible Decisions

Courts defer to local decision makers when these tests are met:



Authority

Are you empowered by statute or ordinance to act on the matter?



Proper procedures

Did you follow proper procedures?
(notice, open meeting, public hearing)



Proper standards

Did you apply the proper standards?
(ordinance, state statute, case law)



Rational basis

Were you unbiased? Could a reasonable person reach the same conclusion?



Evidence

Do facts in the record support your decision?



Concluding Thoughts

- The pattern of a community is the result of many individual land use decisions over time
- Zoning relies on consistent application of current rules by local officials and staff
- Regular zoning updates are valuable to address emerging issues and changing uses
- Zoning can be used with other land use tools to achieve community goals

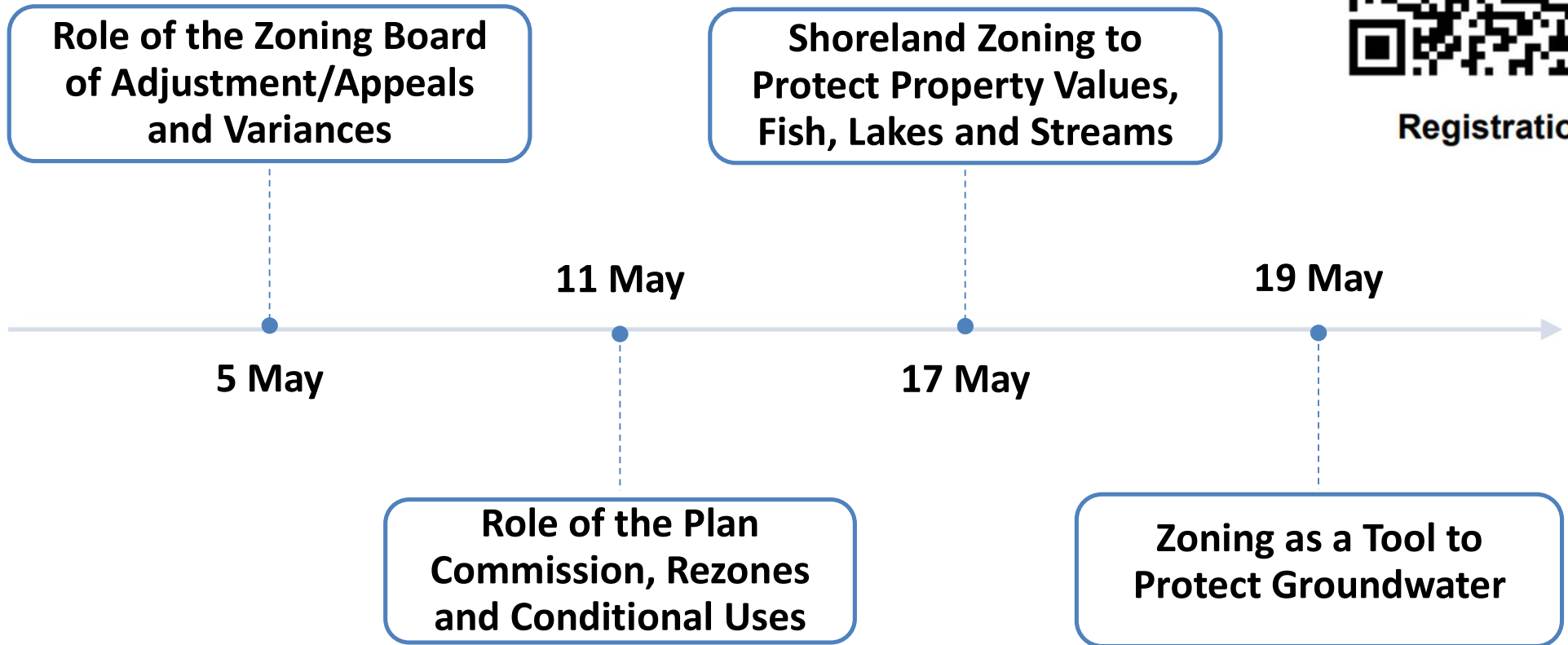
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Recommended Resources

Upcoming Zoning Webinars



Registration

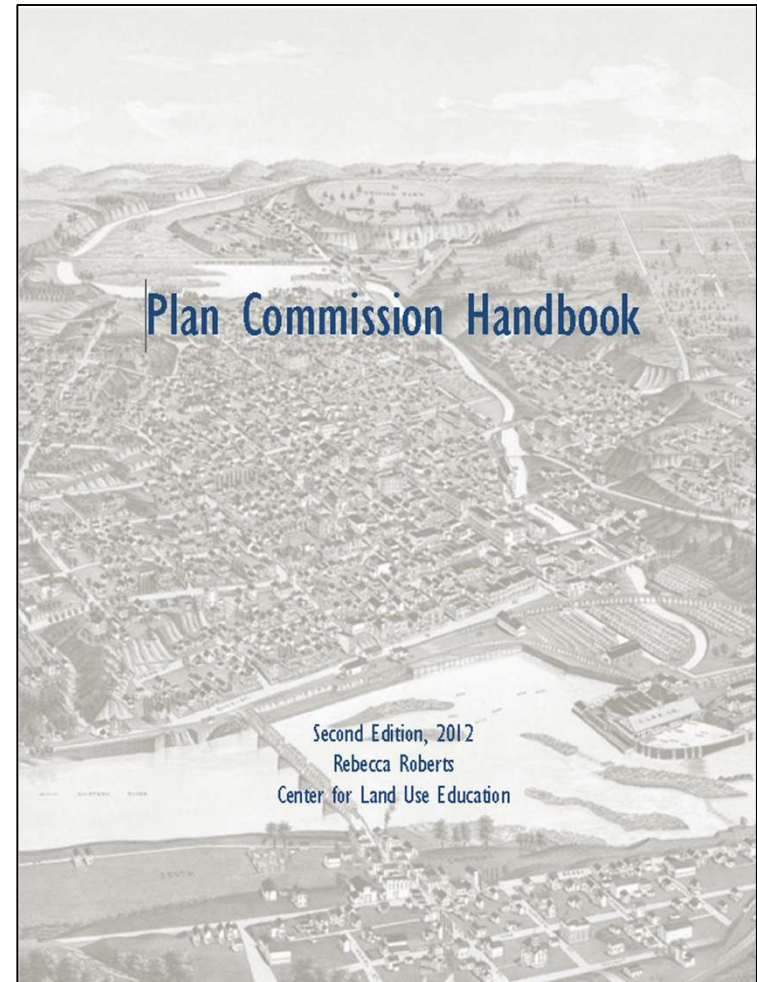


www.eventbrite.com/e/zoning-webinars-spring-2022-tickets-298685475297

Plan Commission Handbook

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

Includes forms, worksheets, glossaries
and recommended resources

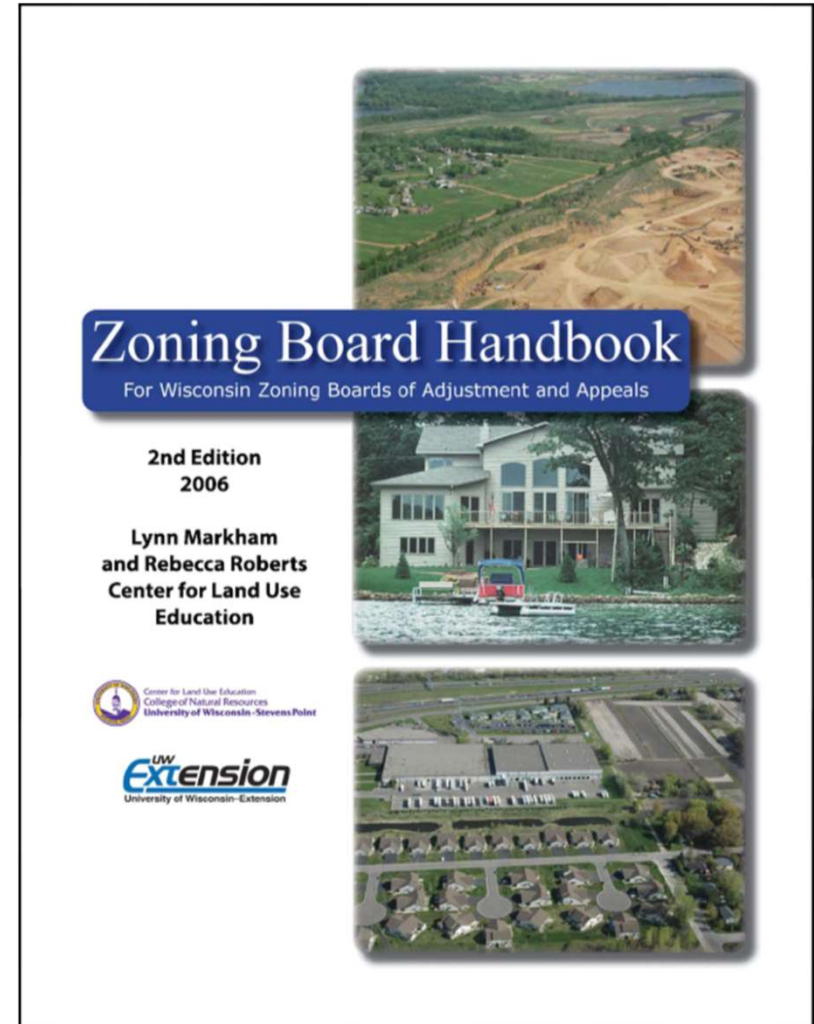


www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx

Zoning Board Handbook

- I. Zoning Board Basics
- II. Laws that Apply to the Zoning Board
- III. Zoning Board Decision Process
- IV. Decisions of the Zoning Board
- V. Appeals of Zoning Board Decisions
- V. Improving Zoning Board Decisions

Includes sample application, public hearing, and decision forms



<https://www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/Zoning.aspx>

Thank You!

Questions?

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