

Plan Commission Handbook

Second Edition
2012

Rebecca Roberts
Center for Land Use Education



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



No state tax revenue supported the printing of this publication. Printed on 100% post-consumer chlorine-free recycled paper. Bound in 52% post-consumer PVC-free recycled binder.

Cover Photo: Chippewa-Falls, Wisconsin, county-seat of Chippewa-County 1886 / [Drawn by] Henry Wellge; Beck & Pauli, litho. Wisconsin Historical Society WHS-11408. Original image has been cropped and printed in grayscale.

► Time Limits, Modification and Revocation of Permits

Once a conditional use permit is granted, subsequent owners of the property are generally allowed to continue the use subject to limitations imposed in the original permit.⁵⁶ However, there are some exceptions to this rule. Communities may issue a limited-term permit for uses that are temporary in nature, such as a gravel pit or annual concert series. Permits can also be revoked or conditions added if the owner changes the use or violates permit conditions.⁵⁷ Revoking a conditional use permit is not considered a taking without just compensation because a conditional use permit is a type of zoning designation and not a property right.⁵⁸

If a zoning code amendment removes the conditional use that was the basis for a permit, the conditional use permit becomes void.⁵⁹ In situations like this, the use is allowed to continue as a nonconforming use. However, the permit conditions are not enforceable.

► Reconsideration and Appeal of Decisions

A person who is dissatisfied with a decision of the plan commission may ask to have their case reheard multiple times hoping for the answer they desire. Courts have found that requests for re-hearings can be denied unless there is a significant change in the project proposal, new information relevant to the decision, or a reversible error in the original process or decision.⁶⁰

⁵⁶ See Rohan, *Zoning and Land Use Controls*, sec. 44.01[4], p. 44-18, and Anderson, *American Law of Zoning* 3d, vol. 3, sec. 21.32, p. 754-5.

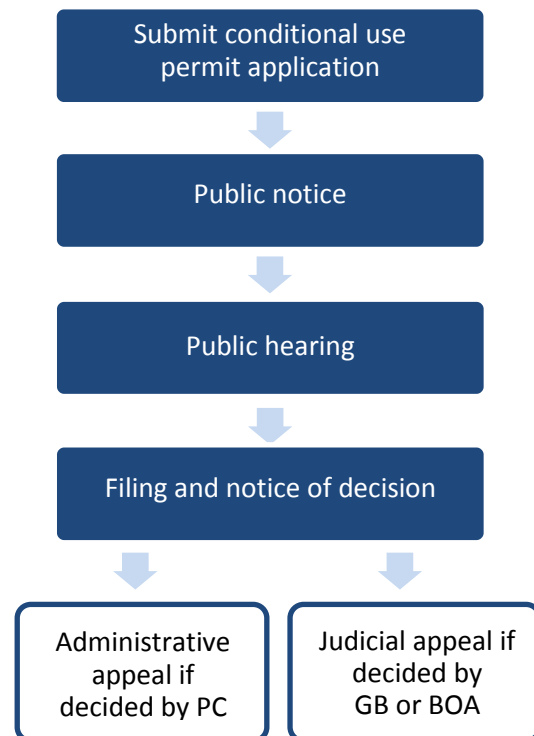
⁵⁷ Action may be taken following notice and a public hearing. *Hartland Sportsman's Club v. Town of Delafield*, 35 F.3d 1198 (7th Cir. Wis. 1994) and *Bettendorf v. St. Croix County Bd. of Adjustment*, 224 Wis. 2d 735, 591 N.W.2d 916 (Ct. App. 1999).

⁵⁸ *Rainbow Springs Golf v. Town of Mukwonago*, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40.

⁵⁹ *Hussein v. Village of Germantown Bd. of Zoning Appeals*, 2011 WI App 96, 334 Wis. 2d 764, 800 N.W.2d 551.

⁶⁰ *Tateoka v. City of Waukesha Bd. of Zoning Appeals*, 220 Wis. 2d 656, 583 N.W.2d 871 (Ct. App. 1998);

Likewise, a person may appeal a decision of the plan commission. Appeal of conditional use decisions is handled differently depending on the body that made the initial decision to grant or deny the permit. The diagram below shows the relationship between the initial decision-making body and the appropriate appeal body. Conditional use decisions of the plan commission are appealed to the zoning board of adjustment or appeals, unless the ordinance provides an alternate mechanism of appeal to the governing body.⁶¹ Conditional use decisions of the governing body or zoning board are appealed directly to circuit court.⁶²

Conditional Use Permit Application and Appeals

PC – Plan Commission, GB – Governing Body,
BOA – Board of Adjustment/Appeals

Goldberg v. Milwaukee Bd. of Zoning Appeals, 115 Wis. 2d 517, 340 N.W.2d 558 (Ct. App. 1983)

⁶¹ *League of Woman Voters v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983); *State ex. rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adj.*, 131 Wis. 2d 101, 388 N.W.2d 593 (1984).

⁶² *Town of Hudson v. Hudson Town Bd. of Adjustment*, 158 Wis. 2d 263, 461 N.W.2d 827 (Ct. App. 1990); *Magnolia Twp. V. Town of Magnolia*, 2005 WI App 119, 284 Wis. 2d 361, 701 N.W.2d 60.

APPEAL OF ZONING DECISIONS

Applicants and other specified parties that are dissatisfied with a zoning decision may file an appeal within time limits specified by state statutes and local ordinance. The appeal process varies based on the type of decision being appealed and the body that made the original decision.

► Administrative Appeals

Decisions of the zoning administrator, such as the granting of a simple zoning permit, the interpretation of a zoning ordinance, the accuracy of measurements, or the authority of a zoning official to make a decision are appealed to the zoning board of adjustment or appeals. Conditional use decisions of the plan commission are also appealed to the zoning board as an administrative appeal, unless the ordinance provides an alternate mechanism of appeal to the governing body.⁶³

Any “aggrieved” person and any officer, department, board or bureau of the municipality affected by an administrative decision of a zoning officer may appeal the decision within a “reasonable” time period determined by the board.⁶⁴ If a time limit is not specified in the local zoning ordinance or by board rules, the appeal period begins when the aggrieved party finds out about the decision or has notice of the decision.⁶⁵ An aggrieved person is one whose legally protected interests are affected by the decision.

When hearing an appeal, the zoning board should review the record of proceedings before it and may take new evidence.⁶⁵ The board has all of the powers of the decision-

maker whose decision was appealed and may reverse, affirm or modify the original decision or issue or direct that a permit be issued. The applicant has the burden of proof of demonstrating that the administrative decision was incorrect or unreasonable.

► Judicial Appeals

Decisions of the zoning board, including variances, conditional uses and administrative appeals, may be appealed to circuit court. Any aggrieved person, taxpayer, officer, or body of the municipality may seek certiorari review within 30 days of filing the decision in the office of the zoning board.⁶⁷

Decisions of the governing body, such as acting upon a permit application or choosing the procedure to follow in considering an ordinance may also be appealed to circuit court. Any party to the proceeding may seek certiorari review within 30 days of being notified of the final decision.⁶⁸

In a certiorari action, the court will review the record using the standards described on page 16. It may affirm, reverse or modify the decision appealed in whole or in part. If a decision is overturned, the court may “remand” or send the case back to the original decision-maker with instructions for further proceedings.

For More Information

Additional information on appealing administrative and quasi-judicial decisions may be found in Chapters 13 and 17 of the Zoning Board Handbook. The Handbook is available on the Center for Land Use Education website at:

www.uwsp.edu/cnr-ap/clue/Pages/ZoningHandbook.aspx

⁶³ *League of Woman Voters v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983); *State ex. rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adj.*, 131 Wis. 2d 101, 388 N.W.2d 593 (1984).

⁶⁴ Wis. Stat. §§ 59.694(4) and 62.23(7)(e)(4).

⁶⁵ *State ex rel. DNR v. Walworth Co. Bd. of Adj.*, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992); *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson Co. Bd. of Adj.*, 131 Wis. 2d 101, 388 N.W.2d 593 (1986).

⁶⁶ Wis. Stat. § 59.694(8); *Osterhues v. Bd. of Adj. for Washburn Co.*, 2005 WI 92, 282 Wis. 2d 228, 698 N.W.2d 701.

⁶⁷ Wis. Stat. §§ 59.694(10) & 62.23(7)(e)10.

⁶⁸ Wis. Stat. § 68.13.

Certiorari Review Standards

The following standards are used by courts to review local land use decisions on certiorari.⁶⁹ These points provide an excellent checklist that can be used by plan commission members and other local land use decision-makers to judge the overall quality and defensibility of their decisions.

	Questions the court will ask when reviewing local decisions	Tips to help local decision-makers comply with the standard
1. Jurisdiction	Did the body have the authority to make the decision?	For each hearing, ensure that the geographical location and type of decision is within the jurisdiction of the body.
2. Proper procedures	Did the body follow proper legal procedures?	Ensure that public notice and open meeting laws are followed as well as other procedures specified in local or state codes.
3. Proper legal standards	Did the body follow the proper legal standards?	Ensure that decisions are based on standards found in local ordinances, state statutes and case law.
4. Unbiased decision-makers	Was the action arbitrary, oppressive or unreasonable, and representative of its will and not its judgment?	- Ensure that decision-makers are unbiased and recuse themselves from decisions that present a conflict of interest or appearance of bias. - Make sure the decision explains the reasons why each decision standard was or was not met.
5. Substantial evidence	Could a fair and reasonable person have reached the same conclusion based on the facts in the record?	- Make sure all evidence, including that from site inspections, is included in the record.⁷⁰ - Explain how the evidence showed why each decision standard was or was not met.

⁶⁹ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401; *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514; *Nielsen v. Waukesha County Bd. of Supervisors*, 178 Wis. 2d 498, 511, 504 N.W.2d 621 (Ct. App. 1993); *Lamar Central Outdoor v. Bd. of Zoning Appeals*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87.

⁷⁰ The record is the compilation of all evidence that was presented to the decision-making body, including applications, written comments, other documents, and oral testimony, as well as the record of the proceedings, deliberations and decision. Additional guidance on drafting land use findings and constructing an adequate record is provided in Chapters 2 and 6.

Legislative enactments, such as the adoption or amendment of a zoning ordinance may also be challenged in circuit court. The most common method of challenging the validity of a zoning ordinance is an action for declaratory judgment.⁷¹ An action for declaratory judgment is typically made when the party claims constitutional violations, such as equal protection, procedural due process or substantive due process. A party can also make a claim for monetary damages due to inverse condemnation if they believe their property was “taken” by regulatory or legislative action. Monetary relief can also be requested if the party claims they have been damaged by a governmental entity violating their federal constitutional rights.⁷²

When a party files for declaratory judgment, they are asking the court to review the circumstances of their claim and “declare” a correct application of the law. In order to have “standing” to sue in a declaratory judgment, a party must have a personal stake in the outcome and must be directly affected by the issue in controversy. The party must have sustained, or will sustain, some pecuniary loss before he or she has standing. A person’s status as a taxpayer, property owner, or one who disagrees with a municipal decision does not confer standing.⁷³

The concept of separation of powers causes courts to defer to legislative action. In order to successfully maintain a challenge to the constitutionality of an ordinance, the party must prove their case beyond a reasonable doubt.⁷⁴ However, when the ordinance concerns the exercise of a First Amendment right, such as religious land uses, adult uses, or billboards, the burden of proof reverses.⁷⁴

Although a court may differ with the wisdom of the zoning authority, it cannot substitute its judgment for that of the local authority. Therefore, the court must uphold a local zoning decision unless it finds an error of law, excess of power, or abuse of discretion. This rule applies not only to the necessity and extent of zoning but also to the classification and establishment of districts, boundaries and uses, and to the determination of whether or not there has been a change of conditions to warrant a rezoning.⁷⁶

In reviewing a declaratory action, the court may rule for or against the party. The losing party may appeal the decision to the Court of Appeals. In rare cases, a decision may be heard by the Wisconsin Supreme Court, either directly or following review by one of the lower courts.

Claims against Governmental Bodies

A landowner, occupant or other person affected by a county zoning ordinance or amendment may contest the validity of the ordinance on procedural grounds within 180 days.⁷⁷ Certain other claims against governmental bodies require a notice of injury and notice of claim to be filed with a local government official within 120 days of the event giving rise to the claim.⁷⁸ The governmental body has 120 days to act on the claim and if disallowed, the claimant has six months to bring suit. Local government officials are exempt from this provision when acting in a legislative or quasi-judicial function. Annexation challenges,⁷⁹ open meetings law and public records law challenges,⁸⁰ and federal constitutional challenges⁸¹ are also exempt.

⁷¹ Rathkopf. *The Law of Zoning and Planning* § 35.01[1] at 35-2 (1980). See also Wis. Stat. § 806.04.

⁷² 42 USC § 1983.

⁷³ *Lake Country Racquet & Athletic Club. v. Hartland*, 2002 WI App 301, 259 Wis. 2d 107, 655 N.W.2d 189.

⁷⁴ *Town of Rhine v. Bizzell*, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780.

⁷⁵ *Fond du Lac County v. Mentzel*, 195 Wis. 2d 313, 320, 536 N.W.2d 160, 163 (Ct. App. 1995).

⁷⁶ *Buhler v. Racine County*, 33 Wis. 2d 137, 146-47, 146 N.W.2d 403 (1966).

⁷⁷ Wis Stat §§ 59.69(14) and 893.73(1).

⁷⁸ Wis Stat §§ 893.80.

⁷⁹ *Town of Burke v. City of Madison*, 225 Wis. 2d 615, 626, 593 N.W.2d 822, 826 (Ct. App. 1999).

⁸⁰ *Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 547 N.W.2d 587 (1996).

⁸¹ *Thorp v. Town of Lebanon*. 2000 WI 60, 235 Wis. 2d; *Felder v. Casey*, 487 U.S. 131 (1988).