



Council Agenda Item

Meeting Date:	June 2, 2026
Agenda Item:	Ex parte communication
Staff Contact (name, email, phone):	Steven T. Chesebro, schesebro@whitewater-wi.gov , 262-458-2780

BACKGROUND

(Enter the who, what, when, where, why)

Ex Parte Communications are prohibited in quasi-judicial meetings and administrative commissions or committees via Wis. Stat. Sec. 227.50 as well as by the constitutional requirements for due process. The Due Process consideration and statute prohibit an official from relying on any new and material information that was not presented as part of the proceeding they are required to use to make their determination. Due process applies to quasi-judicial proceedings before local government and administrative entities, meaning there is a right to a fair hearing and neutral body. A due process violation may be shown by a “serious risk of actual bias” or “impermissibly high risk of bias.” County of Dane v. Pub. Serv. Comm'n, 2022 WI 61, ¶¶ 42-43; Marris v. City of Cedarburg, 176 Wis. 2d 14, 30, 498 N.W.2d 842 (1993). In determining if a violation has occurred courts will often consider evidence regarding (a) prejudging, (b) receipt of information before a hearing on a matter and (c) any pre-hearing communication.

For these reasons, if a committee or board member conducts an independent investigation to gather information outside of the record, such as independently investigating the property, it would be a violation of the parties' due process rights. This could result in an automatic overturning of any decision reached by the committee, a delay the proceedings final outcome, an ethics complaint against the committee member, or a Civil action against the committee member for violation of the applicant's constitutional rights.

While independent gathering of information, such as visiting a site specifically to review the proposal should not be completed, committee members are entitled to and encouraged to obtain the information they believe is necessary to make an informed decision or recommendation. Should they believe that site visits are necessary, the proper procedure would be to request an opportunity during the hearing or request an agenda item be added to a meeting to discuss when on site meetings are desired. If no onsite meeting is held, then committee members are required by law to make their decision or recommendation solely based upon the information provided to them during the meeting.

PREVIOUS ACTIONS – COMMITTEE RECOMMENDATIONS

(Dates, committees, action taken)

At the May 19, 2026 Common Council Meeting, a request was made to discuss the ability of committee and commissions to independently investigate or speak with applicants prior to the meetings.

FINANCIAL IMPACT

(If none, state N/A)

Engaging in independent investigation of topics before a commission or committee can result claims being filed against the committee member. It also can delay resolution of matters resulting in additional staff time and delays to projects within the community.

STAFF RECOMMENDATION

Committee members should not engage in independent investigation of matters that are pending or likely to be pending before their committees.

ATTACHMENT(S) INCLUDED

(If none, state N/A)

Ethical and Procedural Considerations Re: Zoning Boards Due Process requirements.