

WILLOW STREET

2	17
3	16
4	15
5	14
6	13
7	12
8	11
9	10

BLOCK 5

WALNUT AVENUE

HICKORY STREET

2	17
3	16
4	15
5	14
6	13
7	12
8	11
9	10

BLOCK 6

75'	75'	76'	73'	78'	80'	85'
192'	6	5	4	3	2	193'
66'	170'	363'				131'
8	9					131'
10	180'		90'		93'	
11						
12	265'				265'	
13	180'		90'		93'	
170'						

BLOCK 7

BUTTERNUT STREET

2	17
3	16
4	15
5	14
6	13
7	12
8	11
9	10

BLOCK 8

LOCUST AVENUE

STREET

115.5'	66'	"	"	"	"	"	"	"	"	"	"	"	"	"	"	66'	
205'	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
100'	18	BLOCK 4															100'
100'	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
118'	66'	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	66'

ZONING GUIDE

OAK AVENUE

POPLAR STREET

125'	16
"	15
"	14
"	13
"	12
"	11
"	10
9	
125'	

BLOCK 11



HP
2005
SL
PG 3
copy 4

PINE AVENUE

29	28	27	26	25	24	23	22	21	20	19
BLOCK 2				BLOCK 1						
21	22	23	24	25	26	27	28	29	30	31

STREET

132'	8	132'	1	82.5'
"	7	"	2	"
BLOCK A		BLOCK B		
"	6	"	3	"
82.5'	5	132'	4	82.5'
132'		132'		

CHERRY STREET

132'	8	132'	1	82.5'
"	7	"	2	"
BLOCK B		BLOCK A		
"	6	"	3	"
82.5'	5	132'	4	82.5'
132'		132'		

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ZONING GUIDE

Prepared by

SOUTHEASTERN WISCONSIN REGIONAL

PLANNING COMMISSION

Old Courthouse

Waukesha, Wisconsin

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April, 1964

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PREFACE

This publication is one in a series of planning guides prepared by the Southeastern Wisconsin Regional Planning Commission for distribution to cities, villages, towns, and counties throughout the seven-county Region.

The purpose of this guide on zoning is twofold. First, it is intended to explain clearly through photographs, illustrations, and explanatory text the fundamentals of good zoning practice. Second, it is intended to present a model zoning ordinance to be used as a guide in the formulation of local zoning ordinances and thereby to assist the local units of government in achieving better zoning standards throughout the Region.

This guide contains a discussion of both the zoning ordinance text and map; the procedures for their adoption, administration and amendment; a model zoning ordinance and various model administrative and procedural forms.

This guide is not intended to be applied indiscriminately without regard for local conditions; nor is it intended to be a substitute for necessary professional planning, engineering and legal advice at the local level. It assumes the existence of duly constituted local planning and zoning agencies charged with carrying out the local planning and zoning functions and is intended to assist these local agencies in the performance of their duties.

This guide was prepared by the Community Assistance Division of the Southeastern Wisconsin Regional Planning Commission, and any questions concerning the contents and use of this guide should be addressed to that division. It is the hope of the Commission that this publication may be a helpful and informative aid to those citizens and officials interested in developing more attractive and prosperous communities within the Region.

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Chapter I

INTRODUCTION AND BASIC DEFINITIONS

Good community development depends not only upon sound long-range plan formulation at all levels of government, but upon practical plan implementation as well. Zoning is one of the plan implementation devices at the disposal of the community, and the primary function of zoning should be to implement the community's land use plan. A secondary function of zoning should be to protect desirable existing development. Zoning is a major tool for the accomplishment of planning and not a substitute for planning.

BASIC DEFINITIONS

A zoning ordinance is a public law which regulates and restricts the use of private property in the public interest. A zoning ordinance divides a community into a number of districts for the purpose of regulating:

1. The use of land, water, and structures.
2. The height, size, shape, and placement of structures.
3. The density of population.

Zoning seeks to confine certain land uses to those areas of the community which are peculiarly suited to and set aside for these particular uses, thereby encouraging the most appropriate use of land throughout the community; it seeks to assure adequate light, air, and open space for each building and reduce fire hazard; and it seeks to prevent the overcrowding of land and congestion of the street and utility systems.

Obviously, a single set of regulations applying to the entire community could not achieve these objectives of zoning, for different areas of the community differ in character and function. In this respect zoning differs from building, housing, and sanitation codes which, in general, apply uniformly to all land or buildings of like use wherever they may be located in a community. Zoning regulations for different types of districts may be different, but regulations within any given district must be uniform.

A zoning ordinance consists of two parts:

1. A text setting forth regulations which apply to each of the various zoning districts, together with procedural, administrative, and legal provisions.
2. A map delineating the boundaries of the various districts to which the regulations apply.

Wisconsin enabling legislation requires that zoning regulations shall be made in accordance with a "comprehensive plan." Court definitions of the term "comprehensive plan" as related to zoning vary from (1) the idea that the zoning must regulate use, height, and area; through (2) the idea that the zoning must include the entire corporate limits of the community; or (3) must be based upon careful and comprehensive study prior to adoption; to (4) the idea that the zoning must be based upon a documented long-range plan of land use. Although the third concept is the one held by most courts in zoning cases, the fourth concept represents sounder planning and zoning practice.

Each zoning ordinance text and its accompanying zoning map must be tailored to the individual community, or there are certain to be hardships created which will result in lawsuits and the possibility that the zoning may be set aside as arbitrary. The preparation of a zoning ordinance text and map, therefore, is a complex task, calling for the most exhaustive studies and close cooperation between the land use planning and legal professions. The zoning text and map must be prepared so as to bear a just relationship to existing conditions and yet to direct the future development of the community along better lines. If challenged in court, the municipality should be able to show that sufficient accurate data was utilized in the drafting of the ordinance to meet the legal requirement of reasonability. The lack of such data could result in the zoning ordinance being declared invalid.

Drafting of a zoning ordinance and map should be entrusted to the local plan commission as an integral part of the comprehensive planning process, and the following steps should be taken in the preparation of a zoning ordinance:

1. Review of enabling legislation to determine procedural requirements.
2. Assembly of pertinent basic data including:
 - a. Existing land use.
 - b. Existing building heights and front, side, and rear yards.
 - c. Existing lot widths and areas.
3. Analysis of data by an experienced planner.
4. Drafting of a tentative regulatory text and district map.
5. Analysis of resulting nonconforming uses.
6. Conduct of public hearings on tentative regulatory text and district map.
7. Adoption.

NEED FOR ZONING

The importance of zoning cannot be overemphasized, and an unzoned community

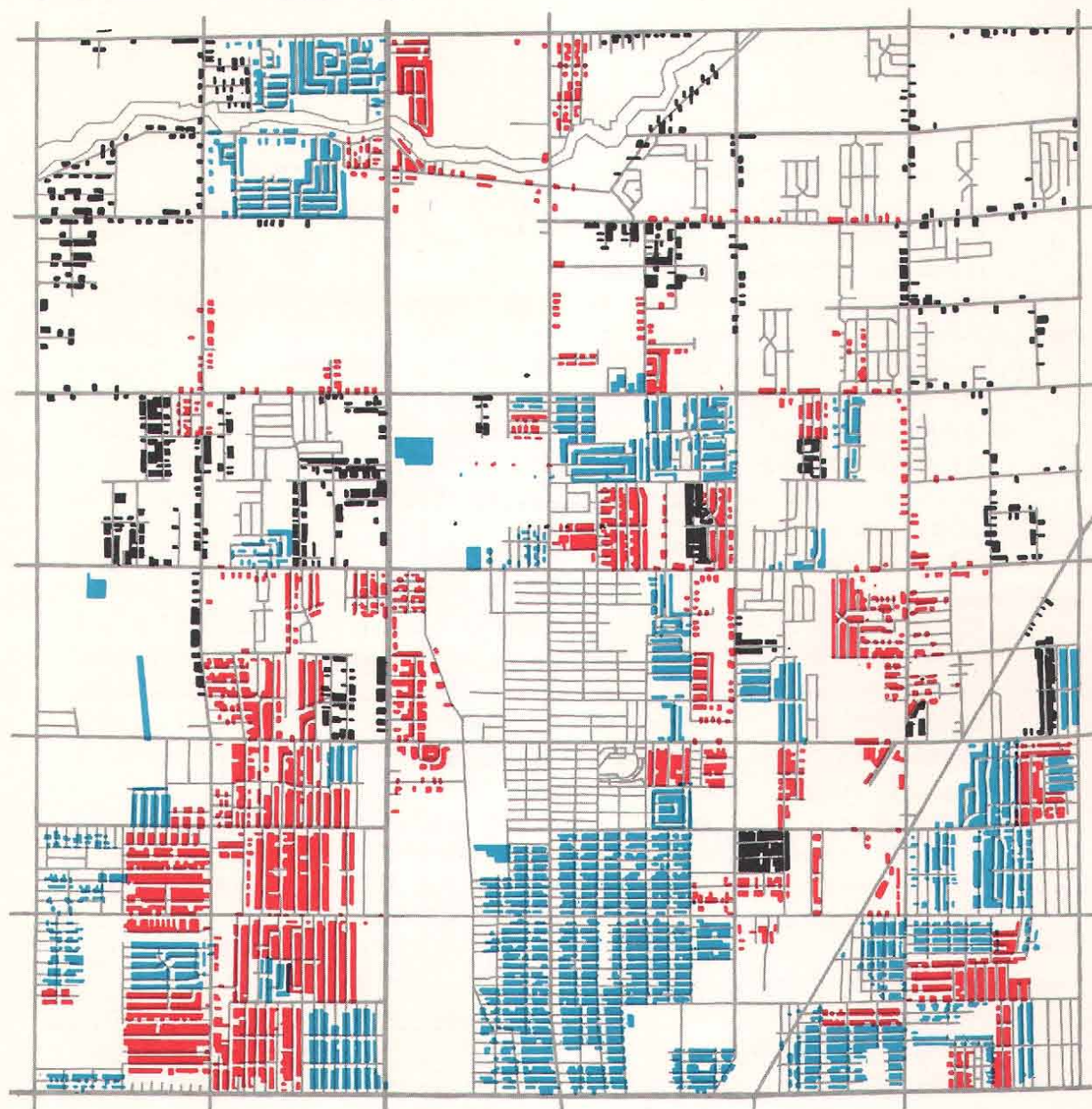
risks its general well-being every day it remains unzoned. Many severe development problems have occurred in unzoned communities that a zoning ordinance would have prevented or alleviated.

Such problems have included:

1. Misuse of land.
 - a. Widely scattered development resulting in a land use pattern which is more costly to provide with municipal services (Figure 1).
 - b. Construction of buildings in flood plains resulting in damage to property, danger to life, and pressure for expensive public flood control measures (Figures 2, 3, and 4).
 - c. Filling and draining of water retention areas causing downstream flood problems and pressure for expensive public drainage improvements.
 - d. Destruction of land and water resources by scattered and shoddy developments (Figures 5, 6, and 7).
 - e. Outdoor advertising that detracts from the natural beauty of the countryside and distracts the driver.
 - f. Inadequate room for expansion of businesses and industries resulting in congestion and ultimate relocation.
2. Conflicting use of land.
 - a. Encroachment of business and industrial uses into existing residential areas with a resulting deterioration and depreciation of the residential area (Figures 8 and 9).
 - b. Encroachment of homes into potential industrial areas destroying both the full potential of the industrial areas and the value of the residences (Figure 10).
 - c. Conversion of older homes into multi-family dwellings with a resulting deterioration and depreciation of residential neighborhoods.
 - d. Mixing of incompatible uses with a resulting deterioration of the overall community environment (Figures 11, 12, and 13).
3. Overuse of land.
 - a. Inadequate provision for off-street parking, resulting in a reduction of the traffic carrying capacity of arterial streets and highways and in the penetration of residential neighborhoods by traffic seeking parking space.
 - b. "Strip" or lineal commercial development along arterial streets and highways, resulting in a reduction of the traffic carrying capacity of the arterials and an increase in traffic safety hazards,
 - c. Excessive land coverage and inadequate open space contributing towards slum development and fire hazards with attendant lowering of property values and shrinking of the community's tax base and higher police, fire, health, and welfare service costs (Figures 14, 15, and 16).

Figure 1

SCATTERED DEVELOPMENT



LEGEND

 UNDEVELOPED	 3-5 DWELLINGS PER ACRE
 1-3 DWELLINGS PER ACRE	 5 + DWELLINGS PER ACRE

Figure 2

URBAN DEVELOPMENT
IN A FLOOD PLAIN



Figure 3

RESIDENTIAL DEVELOPMENT
IN A FLOOD PLAIN

Figure 4

FLOOD TIME IN A FLOOD PLAIN





Figure 5

DESTRUCTION OF LAND RESOURCES

Figure 6

DESTRUCTION OF LAND AND WATER RESOURCES



Figure 7

SHODDY DEVELOPMENT

Figure 8

ENCROACHMENT OF BUSINESS
INTO A RESIDENTIAL AREA



Figure 9

ENCROACHMENT OF INDUSTRY
INTO A RESIDENTIAL AREA

Figure 10

ENCROACHMENT OF A
RESIDENCE INTO AN INDUSTRIAL AREA





Figure 11

CONFLICTING LAND USES

Figure 12

MIXED LAND USES



Figure 13

INCOMPATIBLE LAND USES



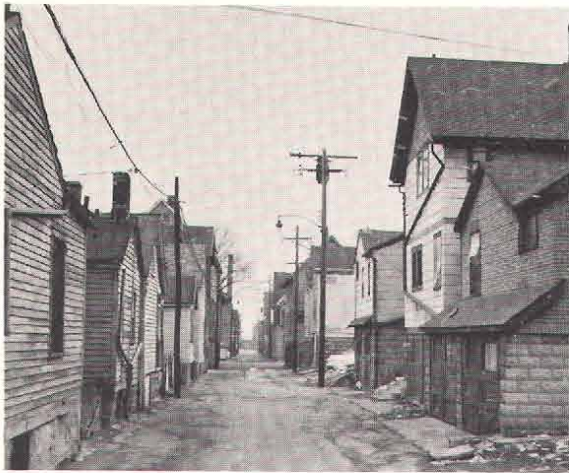


Figure 14

EXCESSIVE LAND COVERAGE

Figure 15

INADEQUATE OPEN SPACE



Figure 16

INADEQUATE HEIGHT
AND YARD REGULATIONS



- d. Lack of adequate site and building design standards resulting in lower values and a poor environment (Figures 17, 18, and 19).

Perhaps the two most important benefits of good zoning are: (1) the maintenance of the integrity of those areas best suited to certain land uses, thereby providing for the most appropriate, efficient, and desirable use of land throughout the community, and (2) the promotion of desirable residential environments abundant in light and clean air that are free from traffic, noise, dirt, and hazards. Good zoning can also promote the abatement of traffic and parking problems. By regulating the bulk and location of buildings, traffic can be dispersed or concentrated as desired; and large generators of parking demand can be required to provide adequate off-street parking and loading space. Other benefits of good zoning include:

1. Control of land use conversions.
2. Control and reduction of fire hazards.
3. Preservation of property values.
4. Prevention of flood control and drainage problems and attendant hazards to persons and property.
5. Facilitating the design and provision of economical and efficient public utilities such as sewer, water, and power.
6. Permitting the orderly selection of sites for future community facilities such as schools, parks, playgrounds, libraries, and fire stations.
7. Regulation of outdoor advertising.
8. Conservation of natural resources including prime agricultural lands.
9. Stabilization of the tax base and protection of property values.

Zoning is so important that it might be said that without a zoning ordinance the other essential elements of a comprehensive plan will probably never be achieved, and the sound design of municipal public works projects will be virtually impossible.

Zoning is one of the best known and most commonly used plan implementation devices. As indicated by the following table, it is being applied by most communities in the Region:

Figure 17

INADEQUATE SITE SCREENING



Figure 18

INADEQUATE FLOOR AREA

Figure 19

INADEQUATE STREET ACCESS



	Total	With Zoning Ordinance	Percent	With Comprehensive Plan	Percent
Villages	53	48	91	8	15
Cities	27	26	96	19	70
Towns	66	54	82	2	3
Counties	7	6	86	0	0

Many zoning ordinances today, however, were adopted without benefit of either a comprehensive plan or the necessary land use studies. Many have been adopted piecemeal with amendments and additions made until they have become too cumbersome for efficient use. Others are even extralegal because of failure to follow the adoption or amendment procedures required by the enabling act or because of subsequent case law. Still others have become obsolete because of recent community growth and development. A need, therefore, exists in many communities within the Region to reconsider their zoning ordinances and procedures in order to make zoning the effective plan implementation device which it can be.

RELATIONSHIP TO THE COMPREHENSIVE PLAN

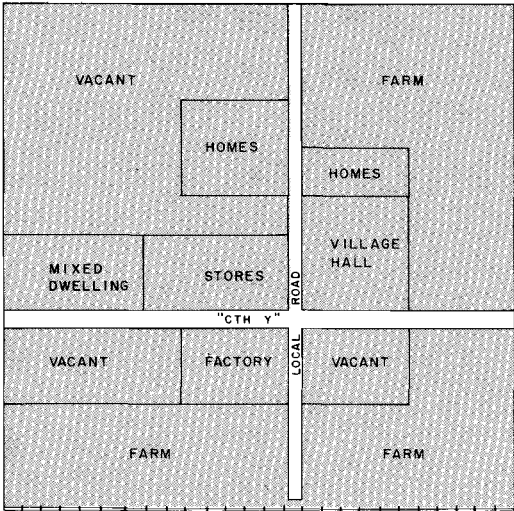
It has already been pointed out that the primary function of zoning should be to implement or carry out the community's land use plan. This does not mean, however, that the zoning ordinance and district map should directly reflect the land use plan. The land use plan is a long-range proposal for the future use of land within the community. Immediate zoning for future uses, although indicated on the land use plan, may not be required for many years to come and can create serious land use problems. The function of the zoning ordinance and map in relationship to the land use plan should be twofold: The zoning ordinance and district map should protect desirable existing development until such time that any given area of the community is ripe for development or redevelopment. At such time the zoning district map should be amended to permit the text of the zoning ordinance to direct such development or redevelopment into desirable new patterns and relationships in accordance with the long-range land use plan (Figure 20).

The extreme application of zoning to either directly reflect the long-range land use plan or to strictly maintain the existing land use pattern, and thereby freeze development exactly as it exists, should both be avoided. The former extreme may lead to overzoning and consequent unstable development, mixed land uses, lowering of property values, deterioration of environmental conditions, and creation of blight. The latter extreme may lead to underzoning, restriction of pri-

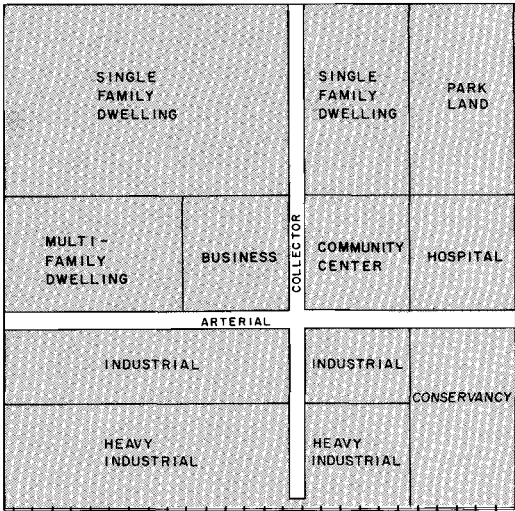
Figure 20

RELATION OF THE ZONING MAP TO THE LAND USE PLAN

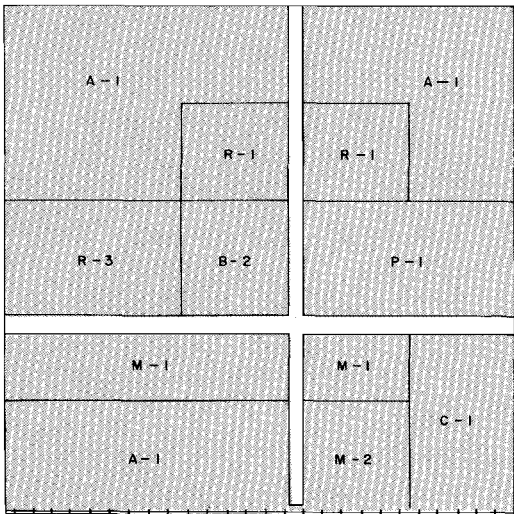
EXISTING LAND USE



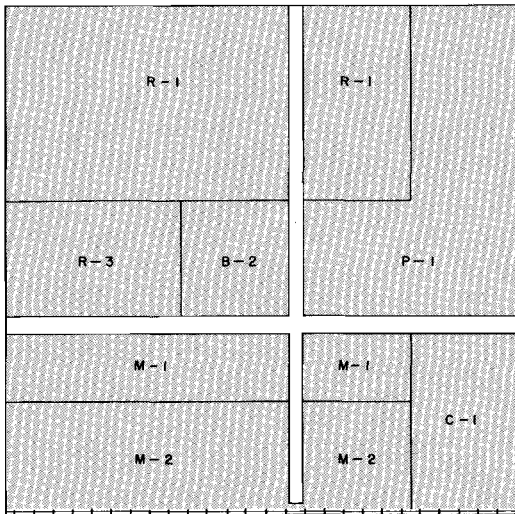
LAND USE PLAN



EXISTING ZONING MAP



FUTURE ZONING MAP



vate renewal and redevelopment activities, deterioration of the environment and may tend to perpetuate many undesirable existing conditions.

Zoning, as a tool for the implementation of the community's land use plan, must also be related to other elements of the community's comprehensive plan.* Devices for the implementation of the comprehensive plan may include, in addition to zoning: official mapping, subdivision control ordinances, building codes, and capital improvement programs. It is extremely important, therefore, that these various implementation devices be closely coordinated if sound community development in accordance with the comprehensive plan is to be achieved. For example, subdivision regulations which control the design of streets, blocks, and lots and the installation of improvements must require compliance with applicable zoning provisions, such as lot size and street, side, and rear yard setbacks. Street yard setbacks specified in a zoning ordinance should apply to future streets indicated on the official map as well as to existing streets. The building code should require that a zoning permit be obtained before a building permit may be issued and should assure that any reconstruction complies with zoning as well as building code requirements. Only through such careful coordination of all of the plan implementation devices at the disposal of local government can the objectives of the community's comprehensive plan be achieved.

* The term comprehensive plan may be defined as an extensively developed plan including proposals for future land use, transportation, urban redevelopment, and public facilities including schools, parks, utilities, and drainage facilities.

Chapter II

HISTORICAL BACKGROUND

Men living together in cities have tended to group together like kinds of land uses. Zoning is a systematization and legalization of this historic process in an effort to protect the general welfare against the misuse of private property. Historically, zoning developed out of the need to regulate the use of land within a community so that the individual property owners might receive maximum benefit from their natural property rights without encroachment upon the property rights of others or upon the general welfare.

The concept and actual use of zoning in this country dates back to colonial times when regulatory measures banning gunpowder mills and storehouses to the outskirts of communities were enacted to ensure the public safety. In 1692 Massachusetts enacted legislation permitting market towns to assign places in each town, where least offensive, for slaughterhouses, stills and tanneries. Later zoning took the form of fire districts from which wooden buildings were excluded.

An 1889 Wisconsin act authorized cities to designate fire districts and establish regulations governing the construction of buildings in the districts according to the risks involved.

The first comprehensive urban zoning ordinance was enacted after intensive study in New York City in 1916. This ordinance was subsequently upheld by New York State's highest court. The Wisconsin Legislature passed its first zoning enabling act in 1917, and the first comprehensive city zoning ordinance in Wisconsin was adopted by the City of Milwaukee in 1920. This state legislation was upheld by the Wisconsin Supreme Court in 1923 which held:

"Although one owns property he may not do with it as he pleases, any more than he may act in accordance with his personal desires. As the interest of society justifies restraints upon individual conduct, so also does it justify restraints upon the use to which property may be devoted."^{16*}

Wisconsin pioneered in 1923 by extending urban type zoning to towns and again in 1929 by authorizing rural zoning.

Recent legislation in Wisconsin has given extraterritorial zoning powers to cities and villages. Legislation proposed in 1963^{**} would give the State Highway Com-

* For all numbered references, see bibliography.

** Proposed "Highway Interchange Protection Law," Bill No. 361, A. (1963);
Proposed "Flood Plain Zoning Law," Bill No. 133, S. (1963).

mission land use planning and zoning powers in the vicinity of existing or planned grade separations and interchanges and would give the State Department of Resource Development modified floodplain zoning powers over areas where appreciable damage from floods is likely to occur. In both the interchange and floodplain zoning proposals, the state agencies may only exercise their zoning powers if the local units of government fail to effectively control the interchange or floodplain areas.

The need for modern zoning has been brought about by the rapid urbanization of our nation and the concomitant increase in the complexity, mobility, and interdependence of our society. The unplanned and haphazard development of cities, as practiced in the late nineteenth and early twentieth centuries, created serious economic and social problems. Office and hotel buildings were erected which occupied their entire lot areas and rose to formidable heights creating darkened buildings, insufficient air, fire hazards, and a destruction of older property values. Factories, livery stables, repair garages, and other commercial enterprises penetrated residential areas. Urban development was allowed to intrude upon the age-old floodways and flood plains of streams and watercourses. No provision was made for off-street loading and parking space. Out of such undesirable conditions came a demand for some orderly solution that would prevent a complete destruction of the urban environment and which would protect real property values. One of the solutions formulated in response to these problems was comprehensive zoning.

Chapter III

STATUTORY AUTHORITY

In the United States, the local municipalities are creations of the state and must obtain their authority to adopt zoning ordinances from the State Legislature through zoning enabling acts. In Wisconsin adequate legislation exists enabling local units of government to adopt zoning ordinances and is codified in what is commonly known as the Wisconsin Statutes. Zoning legislation is enacted under what is known as the "police power" of government; that is, under the power of government to enact regulations for the purpose of promoting the public health, safety, morals and general welfare; and in 1923 the Wisconsin Supreme Court, regarding zoning, held that:

"If such regulations stabilize the value of property, promote the permanency of desirable home surroundings, and if they add to the happiness and comfort of the citizens, they, thereby, promote the attainment of these objects affording a legitimate field for the exercise of the police power."¹⁶

Recently this Court has held that aesthetic objectives alone may be sufficient to sustain an ordinance regulating the exterior design and arrangement of buildings.¹⁸ Similar provisions now appear in some zoning ordinances within the Region.

As zoning ordinances began to be adopted in other states, they were attacked as unconstitutional on the grounds that they deprived an individual property owner of his liberty and his property without due process of law. The United States Supreme Court in 1926, in Village of Euclid v. Amber Realty Co., held that:

"...it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare."²²

More recently, the United States Supreme Court declared:

"The concept of public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."³

The enabling legislation in the State of Wisconsin which permits cities, villages,

towns, and counties to make use of the zoning power are to be found in the following sections of the Wisconsin Statutes, 1961:

City Zoning	Section 62.23(7)
Village Zoning	Section 61.35
Town Zoning	Sections 60.74, 60.75
County Zoning	Sections 59.97, 59.99
Interim Zoning	Section 62.23(7)(da)
Extraterritorial Zoning	Sections 59.97(6), 62.23(7a), 66.052, 114.136
Soil Conservation Zoning	Section 92.09

CITIES

Section 62.23(7) of the Wisconsin Statutes grants zoning powers to cities for the purpose of promoting the health, safety, morals or the general welfare of the community. This power may be exercised by the governing body adopting an ordinance which regulates or restricts the height, stories, and size of structures; the lot coverage; the size of yards, courts, and other open spaces; and the location, use, erection, construction, reconstruction, and alteration of structures and lands. Generally, zoning ordinances must be designed to lessen congestion in the streets; to promote safety from fire, panic, and other dangers; to promote health and welfare; to provide adequate light and air; to prevent overcrowding; and to facilitate adequate provision of transportation, public utilities and community facilities.

In this enabling legislation, the Wisconsin Legislature has placed several specific safeguards upon the use of this zoning power. They are that the zoning regulations shall:

1. Not discriminate against temporary structures.
2. Be uniform for each structure or use in a district.
3. Be made in accordance with a comprehensive plan.
4. Consider the character of the districts and its peculiar suitability for particular uses.
5. Be made with a view to conserving the value of buildings.
6. Encourage the most appropriate use of land.

Other safeguards include the adoption procedures discussed in Chapter IV and the restricted continuance of nonconforming uses discussed in Chapter V. Section 62.23(7) of the Wisconsin Statutes is the primary zoning enabling legislation in Wisconsin as other sections of the Statutes make it applicable to villages and towns as well as cities.

VILLAGES

Section 61.35 of the Wisconsin Statutes grants city planning powers and duties, including the zoning powers enumerated in Section 62.23(7) to villages.

TOWNS

Towns in Wisconsin have three choices of authority for zoning power:

1. Towns may adopt the county zoning ordinance if one exists;
2. Towns may adopt village powers and thereby make use of city zoning powers; or
3. Towns located in counties which have not adopted a county zoning ordinance may adopt a zoning ordinance under powers granted specifically to towns in Section 60.74 of the Wisconsin Statutes.

Section 60.74 of the Wisconsin Statutes gives towns the power to adopt a zoning ordinance which regulates or restricts only certain specified land uses and the height, number of stories, and size of structures; the lot coverage; and the size of yards, courts, and other open spaces. The zoning power granted under this section has certain shortcomings. It was apparently designed for strictly rural towns that do not lie in an urbanizing area for it limits the land uses which may be controlled to agriculture, forestry, recreation, roads, schools, trades and industries. It fails to provide that towns may regulate residential land uses. The power to regulate residential land uses could be inferred, however, from the references to density and distribution of population. This section also lacks many of the specific safeguards that are required under the city zoning enabling act, such as the requirement that the zoning regulations be in accordance with a comprehensive plan and that the regulations must be uniform for each district. It would appear advisable, therefore, that towns desiring to enact zoning ordinances, in the absence of a county zoning ordinance, adopt village powers and proceed under the "City planning" section.

Apparently, towns can act freely in zoning matters only when adopting a county zoning ordinance. Even if a town has adopted village powers, any zoning ordinance adopted or any amendment thereto is under the provisions of Section 60.74(7) of the Wisconsin Statutes, subject to the approval of the county board if the county in which the town lies has adopted a county zoning ordinance.

If the county does not have a zoning ordinance, the town must first petition the county to adopt a county zoning ordinance before it may proceed under Section 60.74 of the Wisconsin Statutes. Even after the town has adopted a town zoning ordinance, it may be superseded by a county zoning ordinance if in conflict therewith.

COUNTIES

Section 59.97 of the Wisconsin Statutes grants to counties essentially the same zoning power as granted to towns under Section 60.74, except that the county zoning powers also include the power to regulate residential land uses.

The county enabling act provides no criteria for guiding the preparation of a zoning ordinance except the adoption procedure and the general purpose clause "of promoting the public health, safety, and the general welfare." In Wisconsin county zoning does not become effective in any town within the county until the town at its own initiative adopts the county ordinance. County zoning in Wisconsin is, therefore, really joint county-town zoning.

The regulations imposed by a county zoning ordinance upon an area continue in effect after annexation to a city or village until changed by official action of the common council or village board. The city or village must enforce such regulations until changed. In the event the annexation is contested in the courts, the county zoning ordinance prevails; and the county retains zoning jurisdiction until final determination by the court.

Counties may also adopt land use regulations to conserve soil resources and prevent soil erosion under Section 92.09 of the Wisconsin Statutes. This power differs from the aforementioned county zoning power in that:

1. The proposed regulations are formulated by the supervisors of a county soil and water conservation district.
2. The County Board may only enact the proposed ordinance, or make amendments thereto, if at least two-thirds of all the land occupiers affected approve.
3. The land use regulations may include such things as engineering operations, cultivation, cropping programs, and land retirement.
4. These regulations may be enforced by the district supervisors by actually performing the work if the land occupier fails to comply.

INTERIM ZONING

A properly prepared zoning ordinance requires much time for its preparation and still more time to comply with the proper adoption procedures. Therefore, the Statutes provide that local communities may adopt an interim ordinance to restrict and control development until a more comprehensive ordinance is prepared and adopted. Only cities, villages, and those towns which have adopted village powers have this power to adopt an interim ordinance; and it may be applied only for a period of two years. Interim zoning has potential for misuse and should never become a community's "only" zoning ordinance. It should be used

when there is the actual danger of substantial unrestricted development taking place which will seriously disrupt existing land use patterns, harm existing development, or spoil lands having high potentiality for other uses. When making use of this device, the preparation of a comprehensive zoning ordinance should be in process.

EXTRATERRITORIAL ZONING POWERS

Limited extraterritorial zoning powers have existed in Wisconsin for a long time. Counties have the power to zone any lands lying in the towns that are owned by the county without securing town approval, provided a public hearing is held and adequate notice is given to the public and written notice to the town board. Any county, city, village, or town owning a state or federally approved airport site may protect the approaches to the site by an airport zoning ordinance regardless of where the site is located. Cities and villages may regulate or prohibit any industry or place where any nauseous, offensive, or unwholesome business may be carried out within the city or village or within four miles of the corporate limits. Cities and villages may also regulate dumping areas within one mile of their corporate limits, but such regulations are subject to approval of the town board within which the dumping area lies.

A new state law of great importance to villages, cities, and towns has recently been enacted by the Legislature. Chapter 241, Laws of 1963, grants comprehensive extraterritorial zoning powers to cities and villages. Under the provisions of this act, cities and villages may zone outside of their corporate limits in unincorporated areas within a radius of one and one-half miles of fourth class cities and villages and three miles from all other cities.

This extraterritorial zoning power must, however, be exercised through a joint committee composed of three citizen members from the city or village plan commission and three members from the town affected. A majority of these six members must vote in favor of the proposed extraterritorial districts and regulations or amendments thereto before their adoption by the city or village. Other procedural requirements that insure consideration of the town's interest are:

1. The city or village must have a plan commission and a zoning ordinance.
2. The proposed area to be zoned must be contiguous to the city or village.
3. The common council or village board must specify by resolution the description of the area proposed for zoning and must publish a notice that they intend to prepare a comprehensive zoning ordinance for that area.
4. The village or city clerk must mail a certified copy of this resolution and a map showing the area proposed for zoning to the county and town clerks.

5. A joint extraterritorial zoning committee must be established.
6. The city or village plan commission must participate with this joint committee in the preparation of the zoning districts and regulations or amendments thereto.
7. The joint committee must hold a public hearing after notice to the public and the town clerk.

The city or village may enact an interim ordinance to preserve existing zoning or uses in the extraterritorial zoning areas while the comprehensive zoning plan is being prepared. This interim ordinance may be enacted as an ordinary ordinance, apparently without any notice to the town before enactment; but it may remain in effect for a period of only two years unless extended for one year with the joint committee's approval. Within 15 days of the enactment of this interim ordinance, a certified copy of the ordinance must be mailed to the county and town clerks.

If administered in the proper spirit, this new law can present an opportunity for local municipalities to cooperate in the planning and protection of areas in which both have mutual aesthetic and economic interest and can thereby become a vehicle for intergovernmental cooperation. If not administered in the proper spirit, it can become another center of dispute and disagreement between towns and incorporated municipalities. The manner in which the law is approached by the public officials concerned will be the all important determinant as to which course the law takes.

APPLICABILITY OF ZONING TO GOVERNMENTAL AGENCIES

Generally, zoning regulations do not apply to federal, state, county, or municipal governments or their agencies when they are exercising governmental powers or duties unless their proposed use is inherently a public nuisance. Most courts have decreed that, unless a different intent is clearly manifested in the enabling act, the federal government, states, municipalities, and other public subdivisions are not bound by the requirements of local zoning ordinances. Recently the Wisconsin Supreme Court held:

"The general words of the statutes conferring zoning powers on cities cannot be construed to include the state, or in this instance the county when in conflict with special statutes governing the location and construction of a county jail."⁸

As noted, there are two exceptions to this rule: one, where the use is a public nuisance and, the second, where the use or structure is to be used for proprietary rather than governmental purposes.

Governmental agencies should, however, make every effort to comply with local zoning ordinances in order to avoid unnecessary conflicts and resulting ill will.

CONCLUSION

The zoning enabling legislation in Wisconsin is complex and not at all uniform in its grant of power nor its procedural requirements (Appendix K). It presents unnecessary difficulty to an ordinary citizen in an attempt to understand it, to the planning agency to use it, and to the planning staff to administer it. In 1963 the Wisconsin Legislative Council was requested by the Legislature to study the entire area of planning enabling acts with a view to consolidating all planning statutes and possibly eliminating unnecessary differences that now exist in the zoning powers granted to counties, cities, villages, and towns.

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Chapter IV

ADOPTION PROCEDURE

The first step in preparing and adopting a zoning ordinance is the creation of a local zoning agency who should then review the state enabling legislation, make zoning studies, formulate tentative zoning recommendations, hold public hearings on these, redraft if necessary, and make a final zoning recommendation to the governing body for their consideration and adoption (Chapter I, page 2).

LOCAL ZONING AGENCY

A local zoning agency must be established, not only for the purpose of making zoning studies, preparing tentative zoning regulations and districts, holding public hearings, and recommending the zoning ordinance to the governing body, but to make subsequent recommendations to the governing body on petitions for changes and amendments to the zoning ordinance.

The state enabling act requires that cities and villages, and towns which have adopted village powers, shall use the plan commission as their zoning agency. If they have none, a special committee composed of trustees, aldermen, or supervisors must be created. Towns operating under the town zoning power, Section 60.74, must use the town park commission as their zoning agency. If none exists, then a special zoning committee must be created. Counties may designate the county park commission, rural planning board, county highway commission, or a special zoning committee as their zoning agency.

In counties the county park commission is the most desirable body to be designated as a county zoning agency since it has responsibilities for county park and highway planning. In cities, villages, and towns, the plan commission should be the zoning agency for several reasons:

1. Plan commissions have been granted the power to prepare comprehensive plans of which zoning is only one implementation device.
2. Local plan commissions have a broad composition of elected officials, appointed officials, and citizen members; and the terms of the citizen members overlap so as to provide continuity.
3. The governing body can more objectively evaluate recommendations prepared by a plan commission than recommendations prepared by a committee of its own members.
4. Village trustees, city aldermen, and town supervisors already have great responsibilities and heavy burdens without adding to these the responsi-

bility for the careful studies which must go into the preparation and administration of a zoning ordinance.

5. A local plan commission skilled in land use planning should be more able than any other agency to make recommendations on subsequent petitions for changes and amendments to the zoning ordinance.

PREPARATION OF THE ZONING ORDINANCE

A formal or informal comprehensive plan should be an absolute prerequisite to the preparation of a sound zoning ordinance text and map. Although legal interpretations differ, this fact was apparently recognized by the Wisconsin Legislature when it made the zoning enabling act a part of the basic city planning enabling legislation and provided, in Section 62.23 (7) (c) of the Wisconsin Statutes, that a zoning ordinance "... shall be made in accordance with a comprehensive plan...." All of the basic data necessary for the preparation of a comprehensive plan thus can be used as a basis for the zoning regulations. Moreover, the zoning regulations and districts have a much better chance of being upheld in court if it can be shown that they are based upon a comprehensive plan and its supporting data. In fact, many, but not all, states have held invalid zoning ordinances not enacted in accordance with a comprehensive plan.

Nevertheless, the record shows, unfortunately, that zoning most often has preceded planning and that most communities have prepared zoning ordinances before adopting a comprehensive plan. In fact, some citizens have taken it for granted that zoning was the same as planning. Gordon Whitnall, in his "New Concepts in Planning and Zoning," says: "...less than five years ago, during a conversation with the planning director of a large American city the startling fact was revealed that he actually believed the expansion of mapped zoning throughout the city constituted a master plan."²³

Many communities, however, for lack of awareness, time, or money, are not preparing a comprehensive plan before embarking upon the creation of a zoning ordinance. The zoning ordinance in such a situation becomes a substitute for the necessary long-range land use plan and, together with other plan implementation devices, such as subdivision control and official mapping, must bear the full weight of guiding and shaping the physical development of the community. In such situations it becomes particularly important that the zoning regulations and districts be based upon:

1. A thorough survey of existing land uses within the community's planning, zoning, and platting jurisdiction.
2. An adequate knowledge of existing building heights and front, side, and rear yards.
3. An adequate knowledge of existing lot widths and areas.

4. An intelligent appraisal of the community's land use needs for the future.

In addition, the following data normally provided in a comprehensive planning study is highly desirable to the preparation of a zoning ordinance in such situations and, indeed, may become essential as the spread of areawide urban development proceeds:

1. An operational soils survey which maps all soil types; determines their physical, chemical, and biological properties; and interprets these properties for planning purposes in terms of soil capabilities for various land uses. *
2. An accurate topographic map showing the principal physical features of the planning area and the elevation and configuration of the land.
3. A delineation of the areas that are or can be served by municipal utilities and services.
4. An accurate property boundary line (cadastral) map showing the location and dimensions of all lots and parcels within the community.
5. Aerial photographs at an appropriate scale.

All of this data should be carefully analyzed, with the assistance of an experienced planner, as a basis for the preparation of a preliminary draft of the zoning regulations and district map. The preliminary draft should be carefully analyzed as to resulting nonconforming uses before proceeding to public hearings. The importance of these studies to sound zoning practice cannot be overemphasized, for zoning as a legal instrument to guide community development can be no better than the basic studies which precede it.

PUBLIC HEARINGS

Public hearings on the tentative zoning regulations and zoning map are required to be held by the zoning agency. This public hearing is for the purpose of giving any interested citizens an opportunity to be heard, and it also gives the zoning agency an opportunity to evaluate the proposed ordinance in light of public reaction.

Cities, villages, and towns which have adopted village powers must give at least ten days' written notice of such hearing to the clerk of any municipality whose

* The SEWRPC is presently conducting an operational soil survey of the entire seven-county Region in cooperation with the Soil Conservation Service, U. S. Department of Agriculture. The results of this survey and its planning interpretation are available to all member units of government.

boundaries are within 1,000 feet of any lands included in the proposed zoning ordinance. Apparently, no specific prior notice to the general public is required for the public hearing held by cities, villages, or towns in enacting their first zoning ordinance, except in the case of airport zoning. It would be advisable, however, that cities, villages, and towns follow the notice requirements for changes and amendments; namely, at least ten days' notice by publication at least three times during the preceding thirty days. Counties are required to publish notice of the hearing once a week for three successive weeks. Counties are required to hold only one countywide hearing. Although it is good practice, a hearing in each town is not required before the town board considers the adoption of the county ordinance.¹¹

Prior to the public hearing, it is desirable that the zoning agency or the planning staff accomplish the following:

1. Request review by all public agencies or officials who might be interested, such as the park board, the school superintendent, and the municipal engineer.
2. Meet with the governing body and explain the text of the ordinance and the zoning map to them.
3. Speak to many of the civic, business, neighborhood, church, or luncheon groups about the need for zoning and some of the protections it provides.

Also prior to the public hearing, sufficient copies of the proposed zoning regulations and zoning map should be available for perusal by interested citizens.

The following procedure for conducting the hearing in orderly fashion is suggested:

1. Present and explain the proposed zoning ordinance, text, and map.
2. The chairman of the zoning agency should request each speaker to be recognized, give his name and address, and present his comments and questions in a concise and clear manner.
3. There should be no debate permitted between citizens and officials; however, all questions should be answered by the officials or their staff.
4. If a large audience is anticipated, it is desirable to limit each speaker's comments to a specified period of time.
5. It is highly desirable and good practice to keep an accurate record of the hearing and of all pertinent comments in the form of minutes, but there is no legal requirement in this respect.

ADOPTION

The zoning agency, after the public hearing, should evaluate the pertinent comments of the citizens and, if they see fit, modify the zoning regulations, adjust the zoning districts, and add any clarifying phrases to the text. If changes in the proposed text or map resulting from the hearing are substantial, a rehearing is probably necessary before adoption. The municipal attorney should be consulted on this and other procedural questions. The zoning ordinance can then be recommended for adoption to the governing body and adopted by them as a regular ordinance; that is, by a simple majority. If the community has a prior zoning ordinance in effect, the proposed ordinance is best handled as a change or amendment to that existing ordinance, as specified in Sections 59.97(3), 60.74(2), and 62.23(7)(d).

TOWN ADOPTION OF COUNTY ZONING ORDINANCES

After the county board adopts a county zoning ordinance, the county clerk must send by registered mail duplicate copies of the text and map to each town clerk for consideration by each town board. The county zoning ordinance does not become effective in any town until the town board approves the ordinance and a certified copy of the approving resolution attached to a copy of the text and map is filed with the county clerk.

There are no provisions permitting a town board which has once approved a county zoning ordinance to withdraw, and the Wisconsin Supreme Court has held that:

"In the absence of such an expressed statutory provision..., it is our conclusion that neither the town nor the town board possess such power of withdrawal or rescission...the county board and not the town enacts the county zoning ordinance and the approval of the town board is required only as a condition precedent to such...ordinance being operative in the town."¹¹

CONCLUSION

Strict compliance with the procedures set forth in the enabling act concerning the enactment of a zoning ordinance is absolutely essential because an ordinance which may be declared invalid because of noncompliance with the necessary procedures is null and void in its entirety while an ordinance held unconstitutional is null and void only in that part specifically so declared.

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Chapter V

THE ZONING ORDINANCE TEXT

The well-drafted zoning ordinance should be clear and precise without complex or confusing language, thereby making it less likely to be litigated. It should be simple in format, well organized, and without verbosity so as to make it intelligible to the citizen, easily referred to by the plan commissioners, and efficiently used by the zoning or building inspector.

The text of the zoning ordinance should include sections covering: introduction, general requirements, specific regulations for each zoning district, conditional use regulations, applicable traffic, parking, and access regulations, a list of modifications permitted, nonconforming use regulations, the procedure for amending the ordinance or changing the zoning districts, and a list of definitions. The text may also be expanded to include performance standards, the creation and operation of a board of zoning appeals and an architectural board. The model zoning ordinance included in Appendix A contains a section on each of the above.

The zoning ordinance should not contain construction requirements as they are better and more appropriately regulated in building, plumbing, and electrical codes. Building setback lines for street widening purposes should not be part of a zoning ordinance but should be incorporated into the community's Official Map under Sections 62.23(6) and 80.64 of the Wisconsin Statutes or, lacking an official map, through special building setback line ordinances adopted pursuant to Section 62.23(11) of the Wisconsin Statutes.

INTRODUCTORY SECTION

The introductory section of a zoning ordinance should set forth the statutory authority for the ordinance, its purpose, intent, short title, and effective date. Special clauses are necessary to protect the ordinance from legal attacks, conflicts, and adverse court decisions. Therefore, interpretation, abrogation, greater restrictions, severability, and repeal clauses should be placed in this introductory section. A preamble may also be placed in this section which would recite that the local zoning agency and governing body have complied with all the statutory procedures required prior to the creation and adoption of the zoning ordinance.

GENERAL PROVISIONS

The general provisions section of a zoning ordinance is the first section normally perused by interested persons. All general rules should be placed in this section to avoid unnecessary search through the entire ordinance for such rules.

The section should include provisions requiring a zoning permit for every structure, parcel of land, or area of water, within the community's planning juris-

diction, thereafter placed in use, changed in use, or structurally altered. It should provide for a zoning permit application procedure, designate a person or persons responsible for enforcement of the ordinance, and should specify what constitutes a violation and the penalties if convicted of a violation. General site restrictions should be included in this section, such as, for example, provision that all lots should abut upon a public street.

The different types of uses and their general restrictions should be introduced in this section; namely, principal, conditional, accessory, and temporary uses and their essential services. Provision should be made for uses that may be invented or created after the ordinance is adopted or which may be inadvertently left out of the ordinance. The local zoning agency or the board of zoning appeals should be designated as the body to determine whether a newly invented or forgotten use can be appropriately placed within a district without requiring an amendment to the ordinance.

ZONING DISTRICT REGULATIONS

All the zoning districts to be used in the community should be established in this section. Provision should be made for the delineation of any district boundaries that may not be readily discernible on the zoning map. Provision should also be made for the district classification of lands that are subsequently annexed and for public ways that are subsequently vacated.

The certified copy of the zoning map should be adopted by reference in this section and provision made for its attestation and accessibility to the public. A special clause should be included to the effect that changes to the zoning map shall not be effective until entered and attested to upon the certified copy. This will avoid conflicts concerning duly enacted changes that have not been placed upon the certified copy and, as such, are unknown to the general public. Therefore, all citizens will be able to rely upon this certified copy as a correct and current zoning map.

Principal uses, accessory uses, and essential services should be permitted directly upon the issuance of a zoning permit after review by the zoning inspector as to the compliance of the proposed use or structure with the zoning ordinance. For example, a one-family dwelling would be the principal use in a residential district, a garage or fence would be some of its accessory uses, and sanitary sewer mains and telephone poles would be some of the dwelling's essential services. An accessory use should, of course, only be permitted once the principal structure is erected or construction has commenced. The rear yard requirement should be modified so as to reasonably accommodate the accessory uses or structures.

The principal uses permitted in each district should be enumerated and the minimum lot width and area; minimum building area and maximum building height;

minimum street, side and rear yards should be specified for each district. Each district should be exclusive; that is, only those principal and conditional uses specified for that district should be permitted. All other uses are assumed to be prohibited. Cumulative districts where each succeeding district permits all the uses in the preceding district are an unwise idea resulting in all uses being permitted side by side in the less restrictive industrial district. The side yard requirements should be increased as the building height increases so as to afford adequate light and air to neighboring uses. There are many additional requirements that may be used to more precisely regulate the location of structures within a district.

Building Bulk Control

Restricting the height, floor area, and shape of buildings as well as the size of open areas around buildings is an extremely important function of zoning and one which becomes increasingly important as the size and density of an urban area increases. In central business districts, people need to be in close proximity for expedient intercommunication, buying and selling, and other business transactions. Here, buildings can properly be higher and closer together than elsewhere provided that adequate light and air are assured, the fire hazard minimized, adequate off-street parking provided, and the density of population controlled. At the other extreme are the single-family residential areas wherein an important requirement is a feeling of spaciousness. Between these extremes lie requirements for such types of uses as multi-family residences and neighborhood businesses. Protection of all these areas requires the incorporation of bulk restrictions in all district regulations.

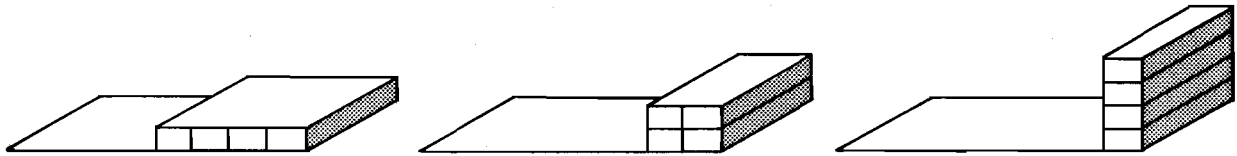
The height of buildings can be restricted by specifying the number of stories permitted or the maximum height permitted or both. Provision must also be made for adequate open space around buildings. This is normally accomplished by specifying minimum street, side, and rear yards. Area regulation may also be secured by limiting the percentage of a lot that may be covered by structures. Good standards may limit site coverage from 15 to 25 percent in multi-family residence districts to an extreme of 40 to 50 percent in business districts. The maximum total floor area permitted per total lot area, sometimes called the floor area ratio (F.A.R.), may also be specified to control intensity of use. Figure 21 illustrates floor area ratios of 0.5, 1.0, and 2.0.

Sufficient street yard depth should be established along arterial streets and highways to keep buildings well back from traveled ways. Adequate street yard setbacks are particularly necessary in the case of uses serving highway traffic, such as garages, filling stations, and roadside restaurants. In residential areas adequate street yard regulations aid in preserving the continuity of the neighborhood pattern. Care should be taken, however, to avoid excessive street yard requirements for these may have to be provided at the expense of more usable outdoor living area to the rear.

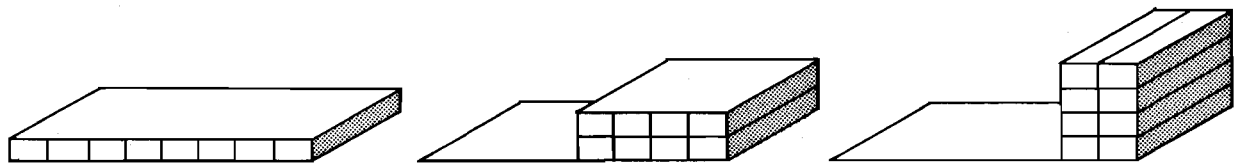
Figure 21

FLOOR AREA RATIOS

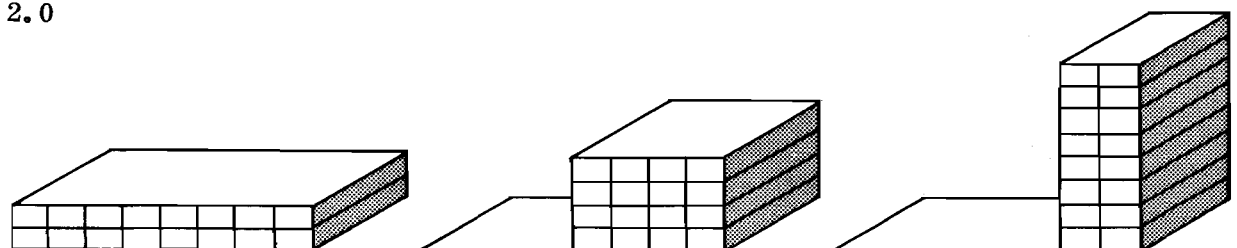
0.5



1.0



2.0



Controlling Population Density

Control of population density may be achieved in several ways. The district regulations may specify the maximum number of families or persons per acre for which new buildings may be designed. Care must be taken in this respect to clearly specify whether gross or net area is meant. The latter may be defined as the actual area within the site boundaries, which includes the ground floor area of buildings plus the necessary on-site open spaces. Gross area may be defined as net area plus the area of any required supporting uses, such as streets and off-site open spaces.

A more usual method of controlling population density is to specify the minimum lot area per family permitted to be housed on a lot. A third method of controlling population density is to specify the minimum on-site open space requirements per family or require a minimum relationship between open space and floor area.

Zoning regulations make no reference to family size, but no better practical way has been found of regulating population density than by limiting the number of families permitted to occupy a given area. In this relation it is important that the ordinance contain a definition of the term "family."

Basic Districts

The number and kind of zoning districts required will vary with local conditions. The zoning ordinance of a rural community will not deal with as wide a range or type of regulations as that for a highly urbanized community. In a rural community, the biggest problems may be caused by the gradual extension of billboards, gasoline stations, roadside restaurants, and similar uses along highway frontages. In an older city, the biggest problems may be caused by land use conversions and redevelopment. The zoning ordinance must be tailored to the specific characteristics as well as size and aspirations of the community. The probable minimum number of districts to be provided will usually be at least three: residential, commercial, and industrial. Even in relatively sparsely populated communities, however, it will generally be necessary to have two types of residential districts: single-family and multi-family districts. The basic districts can be further expanded into several districts wherein the uses, yards, or height regulations are varied. For example, one residential district could permit only single-family dwellings with a minimum lot area of 12,000 square feet per dwelling unit, another could permit only single-family dwellings with a minimum lot area of 7,200 square feet per dwelling unit, and yet another could permit multi-family dwellings with a minimum lot area of 5,000 square feet per dwelling unit; one business district could permit only neighborhood shopping facilities; and another district could permit all businesses found in a central business district; one industrial district could permit safe, clean and quiet uses and another, dangerous, noxious, and noisy uses.

Additional Districts

Additional districts may be used depending upon the type of lands and waters lying within the community's zoning jurisdiction. For example, a conservancy district may be used to protect wetlands, marshes, lakes, streams and water-courses, forested areas, scenic, historic and scientific areas; and a floodway or flood plain district may be used to protect lands subject to periodic or potential inundation. Unsewered residential districts may be used where the lots are large, soils adequately drained, and no possibility exists for central sewer service. Other special districts sometimes used are agricultural districts, university districts, professional districts, vehicle parking districts, transshipment districts, public service districts, and quarrying districts.

Overlay Districts

An overlay district is a special district which is overlaid or superimposed upon part of an underlying basic district. It can be used to accomplish the following:

1. Increase or add to the restrictions of the underlying basic district. For example, a highway interchange overlay district would increase the setbacks from the intersection and add to the access restrictions normally required in the underlying district.
2. Modify the regulations in the underlying district. For example, a group housing overlay district would relax some of the requirements of the underlying residential district so as to accommodate various types of residential units.
3. Permit additional uses in the underlying district, such as conditional uses, while retaining all the basic regulations of the underlying district.
4. Permit uses in the air space above a principal surface use, such as commercial uses over a railroad terminal.

Floating Districts

A floating district is one for which regulations exist in the text of the zoning ordinance but which has not been delineated on the zoning map. Certain criteria specified in the text must be met before the zone can be effected upon the land. When these criteria are met, the floating zone is attached by action of the governing body to the specific area of the community meeting the criteria. For example, in a large undeveloped area zoned residential, a neighborhood shopping center is desired to serve the homes when they are built. Several sites within this area will accommodate the future shopping center, but its exact location is not readily apparent. Zoning all of the sites commercial in advance of the development often results in only marginal commercial uses being constructed, yet zoning one of the sites may be arbitrary and discriminatory. When required criteria, including demonstrated need, is met, the community may then rezone

the land to permit the proposed shopping facilities. Good practice suggests that the general location of those land uses permitted in a floating district be indicated on the community's land use plan and that the district be used to carry out that plan.

Holding Districts

In order to regulate growth in an orderly manner, it is necessary to place development in both time and space. The immediate zoning of large tracts for development in accordance with a long-range land use plan that has been prepared for conditions that are anticipated 20 or more years into the future may result in scattered development. Such development causes problems in the efficient provision of municipal services. The community, therefore, may desire to regulate development so that it occurs in stages and contiguously outward from the developed urban area.

A holding district may be used to achieve this objective by retaining land in a less intensive use district, such as an agricultural district, until the time is appropriate for intensive development. The holding district must be exclusive; that is, only the less intensive uses and their accessory uses must be permitted in that district so as to avoid any premature development.

Planned Development Districts

Planned development districts provide a degree of flexibility not available under the usual type of district regulations. It permits large scale developments with desirable mixed uses to be accommodated. In this manner coordinated development of integral planning units can be accomplished and provisions made for apartments, row houses, neighborhood schools, parks, and shopping facilities. Provisions are usually made to modify the normal district regulations as to frontage, lot area, and yards; but overall densities must be maintained. Minimum land areas per dwelling unit should be specified and additional improvements may be required, such as recreational facilities or open space reservations.

Such provision for planned development may be called by various names, such as "neighborhood unit development district," "group housing district," or "community development district." The same kind of flexibility may be accomplished by the appropriate use of an overlay district or a conditional use permit.

Cluster Development

A cluster development is a method of residential lot development designed to obtain public or private parks and open spaces in areas zoned for large lots by permitting a population density increase on a portion of the area while retaining the same net density over the area as a whole.

A properly designed cluster development has certain advantages for both the municipality and the developer. Its prototype may be seen in any hamlet or

small village lying in a rural township. The per capita cost of providing urban services, such as mail delivery, police patrol, fire protection, snow plowing and street maintenance, is decreased for the municipality. The cost per lot of improvements, such as pavement, sidewalks, curb, gutter, sanitary sewer and water mains, are reduced for the developer.

Other advantages may be obtained that are not as readily apparent. For example, a large open space in close proximity to the dwellings may provide an excellent neighborhood recreation facility. Such open space may reduce runoff and effect economies in storm water drainage. Perhaps a better sociological environment may be possible in a higher density neighborhood surrounded by open green areas.

The community should be careful, however, so as not to accept dedication of small unrelated, unadaptable parcels for open space which may place a maintenance burden on the community out of proportion to the amenities created. The building sites created should be platted; and basic minimum requirements for frontage, lot area, building height, yards, and off-street parking should be established. Standards should be established for the type and size of the open space to be retained in common ownership by the neighborhood and provision made for the maintenance of the open space. The cluster type of development may be accommodated by an overlay district, a planned development district, or by the issuance of a conditional use permit.

CONDITIONAL USES

Conditional uses are those uses of such a special nature as to make impractical their predetermination as a principal use in a district. Static transformer stations, sewage and water pumping stations, telephone exchanges, and water towers are examples of conditional uses commonly permitted in residential districts. Additional requirements should be imposed on conditional uses so as to adequately protect neighboring uses from any noise, vibration, glare, traffic hazards, and odors which may accompany the conditional uses.

Each conditional use, the district within which it is permitted, and any restrictions in addition to the district's normal regulations, such as minimum area and distance from other uses, should be specified. The procedure for a conditional use application, its review and public hearing, should be specified.

The review procedure should include provision for imposing special requirements upon the proposed conditional uses, such as landscaping, planting screens, special fencing, control of operations, hours of operation, improved traffic circulation, increased yards and parking areas.

Conditional uses should not be permitted upon review by only the zoning inspector; and a problem, therefore, arises as to what body should review a proposed

conditional use, grant or deny the permit, and impose any additional conditions. The local planning agency may be designated as the reviewing agency and in most cases is the most qualified body for such review, probably having some professional assistance available. Such a grant of power, however, to the local planning agency is a delegation of the governing body's legislative power. The board of zoning appeals may be designated as the reviewing agency as their power to grant special exceptions is construed to include conditional uses. Finally, the governing body can itself be designated as the reviewing agency to grant the conditional use permit. In the latter cases, the governing body or the board of zoning appeals should be required to await review and recommendation by the local planning agency before taking final action. If the governing body acts as the administrative body in issuing conditional use permits, the possibility exists that their decision can be appealed to the board of zoning appeals and, thereby, create the situation where the board may be in a position to reverse the action of the governing body.⁵

TRAFFIC AND PARKING

Most traffic, parking, and access regulations pertain to public rights-of-way and are found in separate traffic control ordinances. There are, however, certain traffic, parking, and access problems which arise in conjunction with private land use development that a zoning ordinance can readily control. The prohibition of sight obstructions on corner lots so as to improve corner sight distances; the requirement of adequate off-street loading and parking areas so as to abate the on-street parking problem and retain pavement width for traffic movement; the placement of access driveways so as to afford maximum pedestrian safety, and the regulation of access to certain arterial streets and highways, are all examples of traffic, parking, and access problems amenable to zoning.

The required number of off-street parking stalls should be varied with each use; therefore, a clear and simple method of computing the parking requirements should be set forth for each use. These requirements should be reviewed periodically as multiple car ownership becomes more prevalent or driving habits change. Some typical off-street parking requirements are indicated in Table 1.

MODIFICATIONS

The normal height, yard, and area requirements for each district are usually expressed in rigid terms so as to make the administration of the ordinance more efficient. Frequently, there is need for some relief from such rigid regulations. For example, church spires are usually permitted to exceed a district's height limitation; and uncovered porches and landings are usually permitted to extend into required yards. These may be most efficiently handled by a modification section without requiring the formal hearing before the board of zoning appeals necessary to obtain a variance.

Table 1

OFF-STREET PARKING STALLS REQUIRED*

Use	Number, Range and Basis
One-Family Dwellings	1 stall for each dwelling unit
Two-Family Dwellings	1 stall for each dwelling unit
Multi-Family Dwellings	1 stall for each 1 to 2 dwelling units
Hotels, Apartment Hotels	1 stall for each 1 to 3 rooms
Tourist Homes, Cabins, Motels	1 stall for each 1 to 3 guest beds
Trailer Courts	1 stall for each trailer space
Lodging and Boarding- houses	1 stall for each 1 to 3 bedrooms
Clubs and Lodges	1 stall for each 1 to 4 bedrooms
Hospitals	1 stall for each 200 to 1000 sq. ft. of floor area 1 stall for each 1 to 4 bedrooms
Sororities and Dormi- tories	1 stall for each 1 to 5 persons
Sanitariums, Rest and Nursing Homes	1 stall for each 2 to 10 beds 1 stall for each 300 to 1000 sq. ft. of floor area
Medical and Dental Clinics	2 or 3 stalls for each doctor
Mortuaries, Funeral Parlors	1 stall for each 4 to 10 seats
Public Institutions	1 stall for each 2 to 10 beds
Dance Halls	1 stall for each 50 to 100 sq. ft. of floor area
Bowling Alleys	2 to 5 stalls for each alley
Public Assembly and Recreation	1 stall for each 4 to 10 seats 1 stall for each 100 to 300 sq. ft. of floor area
Theaters and Assembly	1 stall for each 4 to 10 seats
Churches	1 stall for each 3 to 10 seats
Schools	1 stall for each 4 to 10 seats
Business, Professional and Governmental Offices	1 stall for each 200 to 500 sq. ft. of floor area
Restaurants	1 stall for each 3 to 6 seats 1 stall for each 100 to 300 sq. ft. of floor area
Retail Stores	1 stall for each 100 to 1000 sq. ft. of sales area
Manufacturing	1 stall for each 2 to 5 employees

*Adapted from a summary of 311 Zoning Ordinances.¹⁰

This modification section should list all structures for which the height, yard, and area restrictions may be modified, such as public and semipublic buildings, buildings housing essential services, industrial and agricultural structures. For each foot such structures are permitted to project above the district height limitations, the yard requirements may be proportionally increased.

Those structures, uses, or appendages permitted to encroach into the yards required for a district should be itemized with a limit placed upon each. For example, uncovered stairs should not project more than six feet into a required yard; accessory uses should not cover more than 20 percent of the rear yard.

Often in a developed area, there exist dwellings that were erected in the required front yard before the zoning ordinance was adopted. A new dwelling made to conform to the required front yard will be penalized by having to locate back of these existing dwellings. Therefore, some relief may be given by permitting the new dwelling to set back the average setback of the abutting dwellings.

Lots lying on cul-de-sacs or the outer line of curved streets present special problems. Their radial side lot lines widen out rapidly towards the rear; and, therefore, it may be more reasonable to require a smaller frontage on the street line than that which is required for rectangular lots. A minimum of at least 30 feet of street frontage should be required with a provision that the lot should widen out at the building line to the lot width required in the district.

SIGN SECTION

The placement, size, and types of signs and billboards should be regulated; and the districts wherein they are permitted should be specified. The structural, constructional, and electrical requirements should not be included in the zoning ordinance as they are more appropriately regulated in building and electrical codes. The different types of signs, such as wall signs, projecting signs, ground signs, and roof signs, should, however, be separately enumerated and regulated.

PERFORMANCE STANDARDS

Performance standards are designed to regulate the effects that certain land uses permitted within a district may have upon neighboring land uses. For example, an industry that must use sensitive measuring equipment may have to be protected from another industry that may cause vibrations outside its premises.

Performance standards were first envisioned as a substitute or adjunct to the rigid requirements normally used to regulate industrial uses. The idea of performance standards, however, can be extended to other uses. The standards suggested in the model zoning ordinance (Appendix A) should be very carefully considered by the zoning agency so as to be the most appropriate for the community. They should be made more specific as new standards and methods of measurement are developed.

ARCHITECTURAL BOARD

A section creating an architectural board and providing for its membership and organization may be placed in a zoning ordinance. Its powers to hear and decide applications for permission to erect, move, reconstruct, extend, change, or alter the exterior of any structure should be specified. Adequate standards to guide the board must be included, and provisions should be made for appeal from the board's decision. This type of aesthetic control has been held valid by the Wisconsin Supreme Court.¹⁸

BOARD OF ZONING APPEALS

A section creating the board of zoning appeals and providing for its membership and organization may be placed in a zoning ordinance. Its powers to decide errors, permit substitutions, issue conditional use permits, and grant variances should be specified in detail. The procedure for appeals, hearings, findings, decisions, and reviews must conform to the state enabling act. The purposes, operations, and administration of these boards are discussed in Chapter X.

CHANGES AND AMENDMENTS

The procedures for initiating changes or amendments to the zoning regulations or the zoning map should be specified and should follow the rules laid down in the enabling act. These are discussed in detail in Chapter XI.

DEFINITIONS

This section should include definitions of those words which are unusual, new, technical or have a special meaning in the ordinance, so as to clarify the ordinance and make it more understandable to the average citizen. The definitions section may often turn out to be one of the most important sections in the ordinance as it may assist in avoiding or winning litigation. Messrs. Bair and Bartley, in The Text of a Model Zoning Ordinance, comment that if a:

"...dispute should get to court, the definitions section is even more important. Courts look to definitions sections in order to determine the intent of the drafters in using particular words. Great weight is normally given to these definitions. This does not mean that the judges ignore the other sections of the ordinance in determining intent, but the definitions section is one of the major highway signs on the road to decision."¹

This section should avoid defining words that have a suitable common definition which can be found in any dictionary. Regulations interposed among the definitions should also be avoided. Generic terms, such as "essential services" or "clothing stores," may be defined to include all types of services or stores so as to reduce the verbiage in the text. Diagrams may be used to illustrate a difficult concept or a particular definition.

INDEX

The table of contents can be especially designed so as to afford every interested reader a true index to the ordinance and avoid the necessity of preparing a conventional index. Some communities may wish, nevertheless, to prepare such an index after the ordinance is written; and this index should include the most important words and terms as well as all uses regulated by the ordinance.

THE MODEL ORDINANCE

Appended to this manual is a suggested model zoning ordinance for use in the southeastern Wisconsin Region. This model ordinance is presented to assist communities in preparing their own zoning ordinance and is not intended to result in a standard zoning ordinance for the Region.

It should be recognized that, in a sense, there can be no model zoning ordinance. Vast differences exist in the economic structure; cultural background; topography; soils; existing residential, commercial, and industrial development; and in the desires of the citizens of the communities within the Region. The complexity is such that standard land use regulations are almost impossible.

There are, however, certain areas of uniformity which can and should be incorporated into a zoning ordinance. Such uniformity lies in the use of standardized format, administrative procedures, enforcement, and definitions. This uniformity becomes increasingly important as today builders, architects, site planners, and developers extend their operations to an entire region, whereas they once only worked within a few communities.

Since each community receives its zoning power from the same enabling act, which has been tested and interpreted by the courts, certain parts of the text can also be standardized. It is, therefore, recommended that local units of government use the model ordinance in Appendix A as to format, general procedures, and common definitions. Specific district regulations governing such matters as uses, yards, height, off-street parking, and the like must be left to the local community.

Zoning ordinances adopted by counties pursuant to Sections 59.97 and 59.99 and towns pursuant to Sections 60.74 and 60.75 of the Wisconsin Statutes must make substantial changes to those sections of the model ordinance dealing with extraterritorial zoning power, changes and amendments, and the board of zoning appeals.

The model ordinance makes no specific provisions for protecting airport approaches or regulating mobile homes. Because of various differences in the enabling act, such as extraterritorial powers, adoption procedures, and removal of nonconforming uses, infrequent mobile home development can be adequately regulated by the conditional use permit procedure in the model ordi-

nance. Those communities anticipating or experiencing frequent problems with mobile homes should prepare and adopt specific design standards for incorporation into Section 4.5 of the model ordinance and may desire to adopt a special licensing ordinance pursuant to Section 66.058 of the Wisconsin Statutes. It is suggested that those communities with federal or state approved airport facilities prepare a special airport zoning ordinance pursuant to Section 114.136 of the Wisconsin Statutes rather than attempt to include provision for airport zoning in the general zoning ordinance.

Chapter VI

THE ZONING DISTRICT MAP

The zoning district map is the media through which the regulations set forth in the text of the zoning ordinance are actually related to the land. Because it must relate the zoning regulations to the natural and man-made features of the urban and rural landscape in a reasonable manner, it is a very important part of the zoning ordinance.

Some early zoning ordinances attempted to delineate zoning districts by means of written descriptions rather than by means of a map. This practice proved to be cumbersome, susceptible to error, and not amenable to visualization by the average citizen. Other early zoning ordinances actually prepared three separate zoning district maps: one relating to use, one to height, and one to area regulations. Experience has proven that this, too, was a needlessly complex and confusing approach. Good zoning practice dictates that the zoning districts be delineated in a comprehensive manner on one map, preferably covering the entire area of planning and zoning jurisdiction.

BASE MAP REQUIREMENTS

An accurate base map of the community is essential to the preparation of a good zoning district map. This base map should show the following information: the U. S. Public Land Survey township, range, section and quarter-section lines and identifying numbers; all lake shore, stream, watercourse, and marsh lines; municipal corporate limits lines; all existing public streets and highways and all railroad rights-of-way; and all public and semipublic ownerships, such as school sites, cemeteries, airports, and parks. For city, village, and town zoning purposes, it is highly desirable that the base maps show all real property boundary lines in their correct location and orientation, including all platted blocks and lots. If a community has an Official Map,* it is important that all proposed streets, highways, parkways, parks and playgrounds shown on that map be also shown on the zoning district map, so that yard requirements can be applied to proposed as well as existing streets and other public lands.

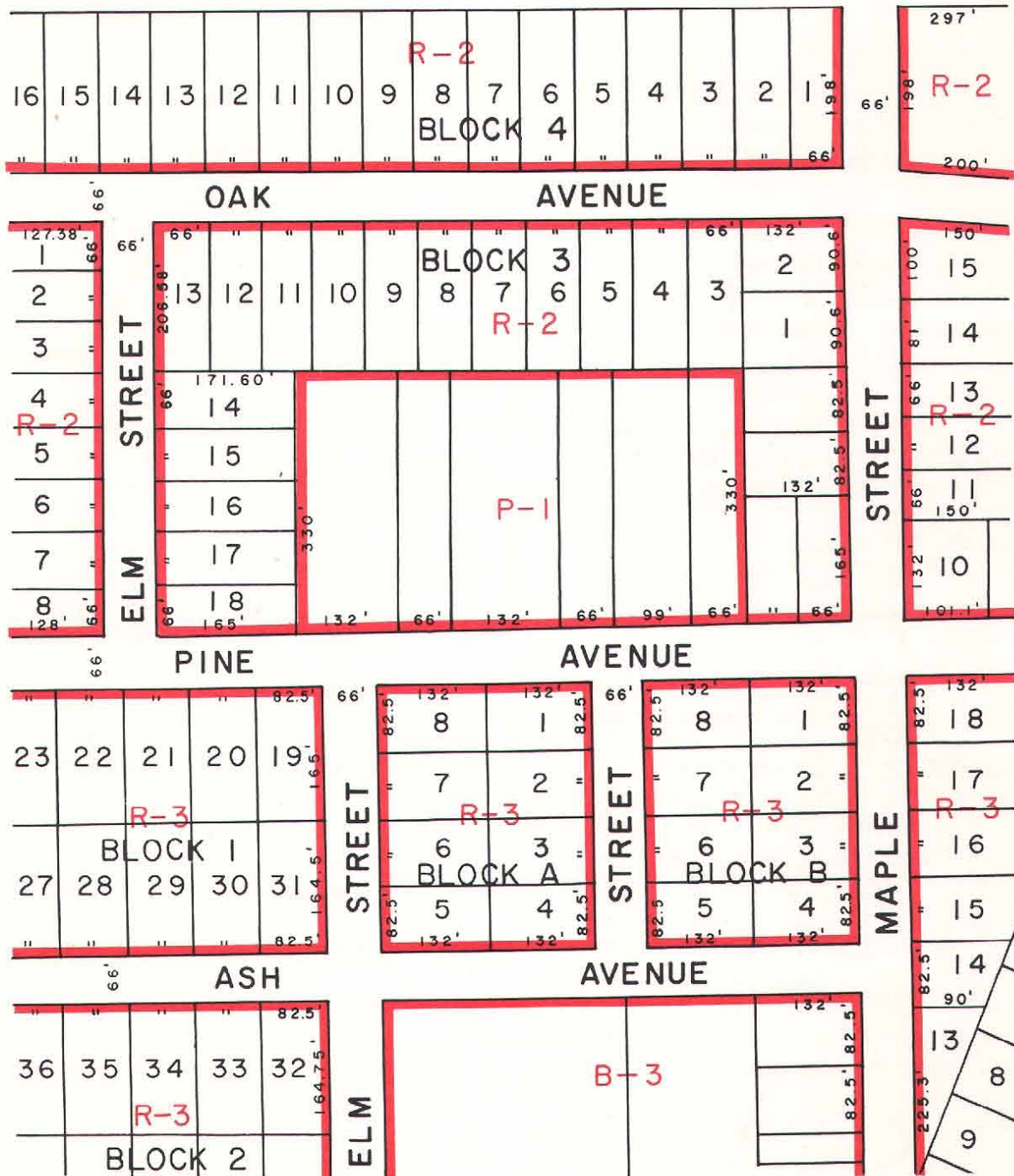
The scale of the map should be determined by consideration of map legibility, development density, and size of the community being zoned. Zoning map scales commonly will range from not larger than 1 inch equals 200 feet to not smaller than 1 inch equals 2,000 feet (Figures 22 and 23).

Existing base maps may be adaptable for use as zoning district maps through cooperation with other municipal departments. Quarter-section plat maps, tax

*See Official Mapping Guide, Planning Guide No. 2, SEWRPC, 1964.

Figure 22

SAMPLE ZONING MAP AT A SCALE OF 1 INCH EQUALS 200 FEET

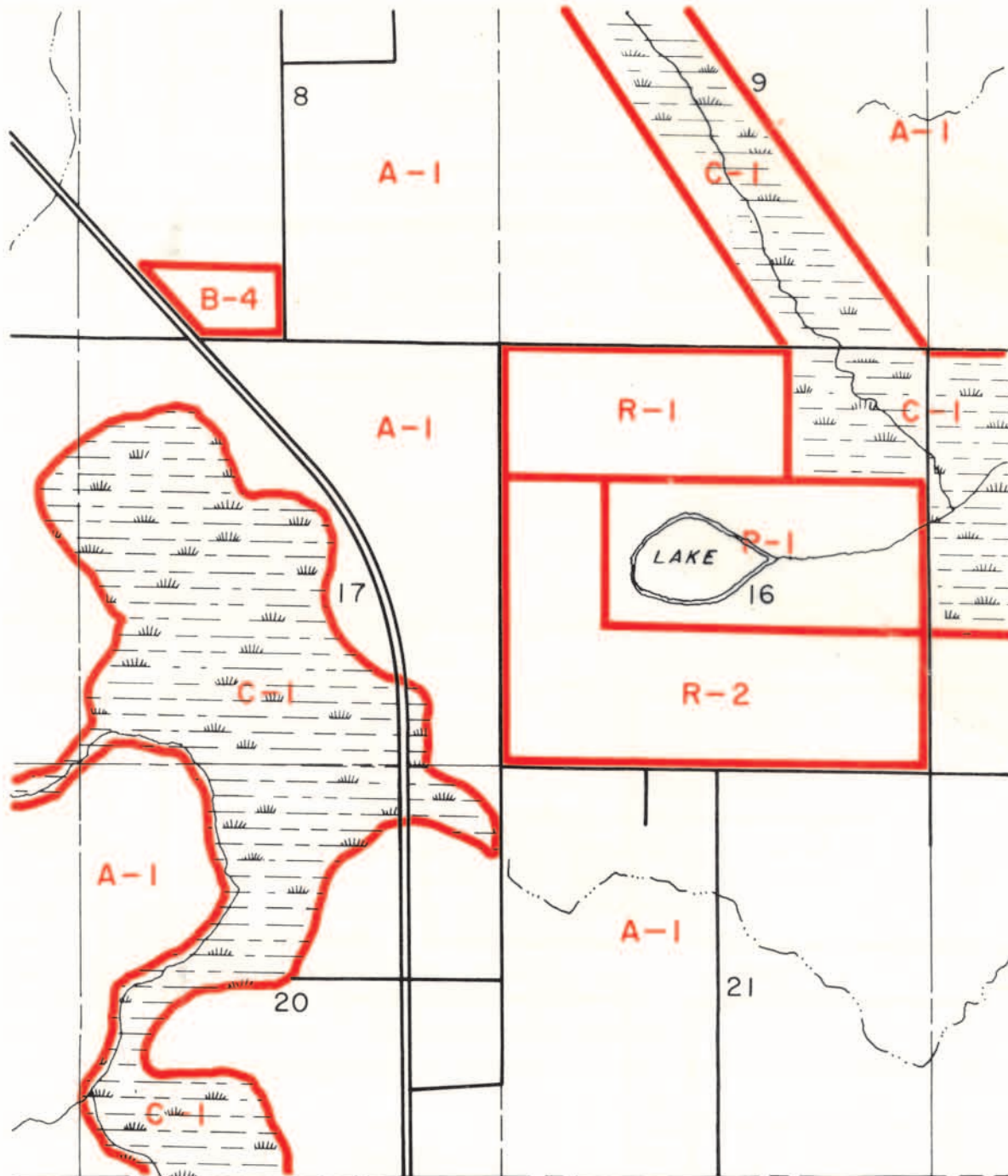


LEGEND

- | | | | |
|-----|---------------------------------|-----|------------------------------------|
| B-3 | INTEGRATED BUSINESS DISTRICT | R-2 | SINGLE FAMILY RESIDENTIAL DISTRICT |
| P-1 | PUBLIC AND SEMI-PUBLIC DISTRICT | R-3 | MULTI-FAMILY RESIDENTIAL DISTRICT |

Figure 23

SAMPLE ZONING MAP AT A SCALE OF 1 INCH EQUALS 2,000 FEET



LEGEND

- | | |
|-------------------------------|----------------------------------------|
| A-1 AGRICULTURE DISTRICT | P-1 PUBLIC AND SEMI-PUBLIC DISTRICT |
| B-4 HIGHWAY BUSINESS DISTRICT | R-1 SINGLE FAMILY RESIDENTIAL DISTRICT |
| C-1 CONSERVANCY DISTRICT | R-2 SINGLE FAMILY RESIDENTIAL DISTRICT |

assessment maps, and Official Maps are examples of maps which may be so adaptable. The county base maps prepared by the Southeastern Wisconsin Regional Planning Commission are readily adaptable for use in the preparation of county and rural township zoning district maps. Ratioed and rectified enlargements of aerial photographic negatives upon which existing property boundary lines are superimposed may also be adaptable to the preparation of zoning district maps for largely rural townships (Figure 24).

DISTRICT DELINEATION

The actual task of delineating zoning districts is as awesome a task as it is important, and proper execution lies within a painstaking study of the community's man-made and natural physical features, its existing land use pattern, and probable future land use demand. Certain natural and man-made characteristics of the landscape readily suggest certain uses that are compatible with those characteristics. One can hardly imagine industry desiring to locate on steep wooded slopes away from major arterial streets and highways. Neither can one imagine a family seeking to locate a residence on a flat, treeless site lying between an arterial highway and a railroad.

The location of arterial streets and highways and of railroad, airport, and harbor facilities will, to a considerable degree, determine placement of major commercial and industrial districts; and the location, alignment, and characteristics of these major transportation facilities are in themselves determined, to a considerable degree, by critical features of the landscape. Other factors to be considered in the delineation of district boundaries may be less obvious but no less important. The steepness of natural slopes, the depth to the groundwater table, and the depth to bedrock will determine whether land is at all suitable to development. The permeability of the natural soils will determine whether private on-site or public central sewage disposal systems are required and consequently influence development densities. Prevailing wind direction should determine the location of industries that produce noxious odors or air pollutants. Bodies of water having aesthetic, recreational, and transportational potential should influence the location of residential, commercial, and industrial districts. It is expensive to cut or fill land and foolhardy to allow development in the floodways and floodplains of streams and watercourses. It is dangerous and destructive of the balance in nature to fill or drain wetlands and reduce natural cover; and, in general, it is usually poor economics to alter the natural landscape so as to accommodate uses that are not adaptable to its topographic characteristics.

Existing land use development is also an important determinant of zoning district placement, and good existing development should be protected and enhanced.

It should be noted that all of these considerations, and others, are the same as those which must be considered in the preparation of a land use plan; and indeed, the existence of such a plan should be a prerequisite to good zoning and

Figure 24

SAMPLE ZONING MAP AT A SCALE OF 1 INCH EQUALS 400 FEET



LEGEND

A-1 AGRICULTURE DISTRICT

B-3 INTEGRATED BUSINESS DISTRICT

P-1 PUBLIC AND SEMI-PUBLIC DISTRICT

R-1 SINGLE FAMILY RESIDENTIAL DISTRICT

R-2 SINGLE FAMILY RESIDENTIAL DISTRICT

will do much to simplify the districting problem.

The zoning district map should be comprehensive; that is, all lands within the zoning jurisdiction of the community should be placed in some zoning district and no area should be left without a classification. Bodies of water may also be placed into appropriate zoning districts whether they be conservancy, floodway or flood plain, or recreational districts. Several districts may be used over large bodies of water.

A valuable supplement to the zoning district map is a table summarizing the essential zoning regulations applicable to each district shown on the map (Table 2). Such a table is most useful to private citizens in understanding the requirements of the ordinance in relation to the district boundaries.

DISTRICT BOUNDARIES

The boundaries of the zoning districts should be readily reproducible upon the ground and should follow lines easily discernible or easily reconstructed by field survey. For example, the centerlines of streets, highways, and alleys; U. S. Public Land Survey township, section and quarter-section lines; real property boundary lines, including platted lot lines; and railroad right-of-way lines all form good zoning district boundaries in this respect. When such features are not suitable to the placement of district boundaries, it may become necessary to place dimensions on the zoning district map defining the location of the district boundaries in relation to lines which are readily reproducible upon the ground.

Shore lines of lakes and streams and boundaries of wetlands are especially difficult to handle as zoning district boundaries since their location in the field may present severe problems. Zoning district boundaries are often placed at the high water mark or, where the high water mark is difficult to determine, at the "limits of the soil that is so affected by water as to be marked by a nature and vegetation distinct from that of higher land." Better practice would accurately map these natural boundaries in relation to the real property boundary lines and in turn establish zoning district boundaries in relation to the property boundary lines.

The most careful and accurate delineation of zoning district lines on a zoning district map will not entirely eliminate the necessity for occasional interpretations. Where conflicts arise, the board of zoning appeals should make the necessary interpretations.

THE OPERATIONAL SOIL SURVEY AND ZONING DISTRICT BOUNDARIES

An operational soil survey and its accompanying land use interpretations are an invaluable aid to a local zoning agency in determining district boundaries so as to encourage the best use of land throughout the community. In such a survey, the boundaries of each different type of soil are delineated upon current aer-

Table 2
SUMMARY OF ZONING REGULATIONS

District No.	District Name	Principal Uses	Conditional Uses	Lot		Building		Minimum Yards		
				Minimum Width In Feet	Minimum Area In Square Feet	Minimum Area In Square Feet	Maximum Height In Feet	Street	Rear	Side
R-1	Single-Family Residential	One-family dwellings.	Public and semipublic uses.	120	40,000	2,000	35	50	50	20
R-2	Single-Family Residential	One-family dwellings.	Public and semipublic uses, planned residential developments, clubs, rest homes, nursing homes, clinics, home occupations, and professional offices.	70	10,000	1,200	35	25	40	10
R-3	Multi-Family Residential	Multi-family dwellings.	All R-2 conditional uses.	120	15,000	500*	35	35	50	20
B-1	Neighborhood Business	Neighborhood retail stores.	Public and semipublic uses, highway oriented uses.	---	---	---	35	25	50	--
B-2	Community Business	Major retail stores, hotels, newspaper offices, night clubs, and broadcasting stations.	Public and semipublic uses, highway oriented uses, commercial recreation facilities.	---	---	---	45	10	30	--
B-3	Integrated Business	None.	All B-2 principal uses, public and semi-public uses, highway oriented uses, and commercial recreation facilities.	200**	2 acres	---	45	80	40	--
B-4	Highway Business	None.	Public and semipublic uses, highway oriented uses, and commercial recreation facilities.	400**	4 acres	---	35	100	40	40
M-1	Industrial	Light manufacturing and warehousing.	Public and semipublic uses, animal hospitals, dumps, disposal areas, incinerators, pea vineries, creameries, condenseries, and commercial service facilities.	---	---	---	45	25	30	20
M-2	Heavy Industrial	All M-1 principal uses, freight yards, inside storage, and breweries.	All M-1 conditional uses, public and semipublic uses, outside storage, all other manufacturing, processing, bottling, and storage operations of a potentially noxious, hazardous, or nuisance character.	---	---	---	60	10	30	10
M-3	Quarrying	Existing mineral extraction and concrete manufacturing operations.	Extension or creation of mineral extraction and concrete manufacturing operations, utilities.	---	---	---	45***	200 ft. from any right-of-way or property line, 100 ft. for accessory uses.		
A-1	Agricultural	Farming, grazing, forestry, greenhouses, nurseries, stables, paddocks, dairying, hatcheries, and farm dwellings.	Public and semipublic uses, animal hospitals, dumps, disposal areas, pea vineries, creameries and condenseries, commercial raising of dogs, mink, rabbits, fox, goats, and pigs.	200**	10 acres	---	50***	50	50	50
C-1	Conservancy	Fishing, hunting, preservation, conservation, forestry, wildlife preserves, hatcheries, and water retention.	Drainage, grazing, orchards, truck farming, utilities, and wildcrop harvesting.	---	---	None permitted*** except accessory structures.		--	--	--
F-1	Floodway	Drainage, movement of flood water, navigation, and stream bank protection.	Grazing, horticulture, open parking and loading areas, open markets, pasturage, open recreational uses, truck farming, wildcrop harvesting, and wildlife preserves.	---	---	None permitted*** except navigation and water measurement and water control facilities.		--	--	--
F-2	Flood Plain	Flood overflows, impoundments, parks, forestry, hatcheries, and wildlife preserves.	All A-1 and P-1 uses, warehousing, storage, parking and loading areas.	---	---	First floor no less than two (2) feet above the level of the 25-year recurrence interval flood.		--	--	--
P-1	Public and Semipublic	Parks, playgrounds, beaches, forestry, wildlife preserves, conservation, and water control facilities.	Public and semipublic uses, recreational uses, all structures.	---	---	---		--	--	--

* Per Family Unit

** Frontage

*** Structures

In addition, uses are regulated as to traffic, loading, parking, highway access, interchange protection, signs, and performance.

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ial photographs; and each soil type mapped is identified and its slope, physical, chemical, and biological properties determined by field and laboratory tests (Figure 25). An interpretive report is then prepared to accompany the soils map, and this report contains information on aspects of the soil capabilities such as: crop adaptation properties; wildlife relationships; susceptibility to flooding, ponding and concentrated runoff; erosion potential; depth to water table; percolation rates, and bearing strengths. Suitability ratings for various urban uses are assigned to each soil type in the interpretive report and include suitability ratings for residential use with or without septic tanks, and for commercial, industrial, transportation, recreational, and agricultural use (Table 3). Suitability ratings are also given for use as a source of sand and gravel or as a source of material for road basis, reservoir embankments and topsoil. From these, suitability maps for various uses may be prepared (Figure 26).

With this type of detailed soils data prepared by competent soil scientists, local zoning agencies are able to more quickly, logically, and precisely delineate zoning district boundaries in relationship to the permitted uses in each district and may be far more confident that the zoning can, if necessary, be supported in court.

The Southeastern Wisconsin Regional Planning Commission is conducting a detailed operational soil survey of the entire seven-county planning Region. The work is being done for the Commission by the Soil Conservation Service of the U. S. Department of Agriculture, and the results will eventually be presented in five published reports covering individual counties or combinations of two counties. Preliminary results will, however, be made available to the local units of government, as the work proceeds, for application in the preparation of local zoning ordinances; and all local units of government within the Region are encouraged to utilize the results of this study in their zoning work.

THE RESULTS OF POOR DISTRICTING

If the local land use plan or the zoning ordinance is not carefully designed to fit the natural and man-made features of the landscape and to realistically meet probable future land use demand, the zoning districting will merely result in the creation of artificial boundaries. This soon becomes apparent through the number of rezoning petitions, appeals, and litigations growing out of the administration of such an ordinance.

Far more serious and even irreparable damage may be done if the community fails to note the results of poor districting in a timely manner. The more obvious results of poor districting may be readily apparent, but the more subtle ill effects may remain unnoticed until it is often too late. The community tax base may be adversely affected with high per capita cost of municipal services established; inadequate sites for industrial expansion may exist; and insufficient recreational areas may have been preserved. Flood damages; dirt, noise,

Figure 25
OPERATIONAL SOIL SURVEY MAP

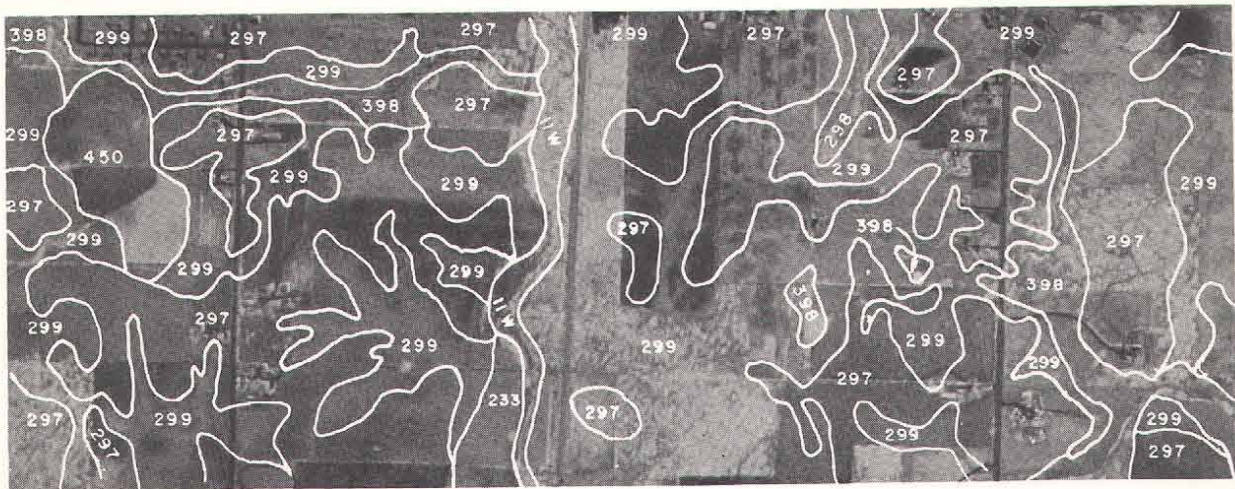


Table 3
USE SUITABILITY RATINGS OF MAPPED SOILS

MAPPING UNIT	RESIDENTIAL			AGRICULTURAL	INDUSTRIAL	TRANSPORTATION	RECREATIONAL	
	WITH PUBLIC SANITARY SEWER	WITHOUT PUBLIC SANITARY SEWER					NATURAL	DEVELOPED
		LESS ONE ACRE	ONE ACRE OR MORE					
11W	E	E		E	E	E	C	E
233	C	C	D	C	D	D	C	C
297	A	A	A	B	C	C	C	C
298	B	D	C	A	B	B	A	B
299	C	C	D	C	D	D	C	C
398	E	E	E	E	E	E	B	E
450	A	A	A	B	B	C	C	B

LEGEND

A. VERY GOOD

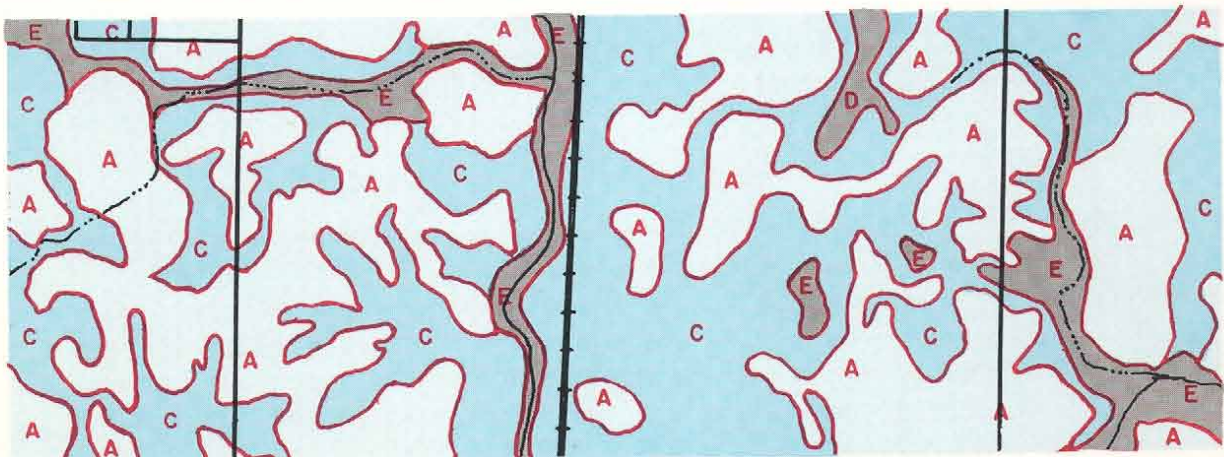
B. GOOD

C. FAIR

D. POOR

E. UNSUITED

Figure 26
SUITABILITY MAP FOR RESIDENTIAL LOTS LESS THAN ONE ACRE



and odors from industry; traffic congestion; and declining property values may become serious problems; and a potentially good environment for human life may be destroyed.

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Chapter VII

COMMON ZONING PROBLEMS

A local unit of government engaged in the preparation, adoption, and administration of a zoning ordinance will find it is confronted with certain recurrent and particularly knotty problems. Some of these problems are so important or so common as to warrant brief discussion herein.

OVERZONING

One historically common mistake that should be avoided in the preparation of a new zoning ordinance and map is overzoning. Overzoning may be defined as the designation of large areas of the community for multi-family housing, commercial, or industrial use that are far beyond the community's foreseeable needs for such land uses. This is often done in the hope that such overzoning will attract and encourage development that will improve the community's tax base. Actually, overzoning only encourages: scattered development having high municipal service costs, the development of marginal uses, and undesirable speculation on land values. Moreover, overzoning often results in petitions to redistrict for other uses which, if granted, result in undesirable mixed use and mixed age districts. Historically, overzoning, coupled with zoning regulations which permitted all "higher" uses in "lower" use districts (cumulative districts), resulted in many severe land use problems for local municipalities including mixtures of residential and industrial uses, to the detriment of both (Figure 27).

Studies have shown that, in general, not more than 2 to 3 percent of an average urban area is actually used for commercial purposes, with approximately the same percentage being used for multi-family dwelling purposes. Yet it is around this approximately 4 to 6 percent of the total urban land use area that most zoning controversies arise. It is not unusual to find zoning ordinances setting aside up to 25 percent of the urban area for commercial uses, sufficient to provide for the greatest imaginable business expansion over a period of generations (Figure 30). As a result a large proportion of such property is almost certain to be poorly developed or remain entirely undeveloped. Tables 4 and 5, compiled by Harland Bartholomew in his Land Uses in American Cities,² illustrate the small percentages of land actually utilized by multi-family, commercial, and industrial uses both in central and satellite cities.

Communities should also exercise great judgment in zoning for residential use, particularly in the rural-urban fringe areas. Residential zoning means residential development, and the community must be prepared to assume the cost of providing municipal services and facilities for the new residents. Requiring large or estate type lots is often suggested as a method to improve the community's tax base by attracting high income residents. It should be realized, how-

Table 4
LAND USES IN CENTRAL CITIES

	11 Cities 10, 000 thru 25, 000	8 Cities 25, 000 thru 50, 000	10 Cities 50, 000 thru 100, 000	7 Cities 100, 000 thru 250, 000	5 Cities 250, 000 thru 1, 000, 000
Use					
Residences: Percentage of Developed Area					
Single-family	35.7	32.8	32.8	35.6	28.3
Two-family	3.2	4.6	5.4	3.6	6.8
Multi-family	<u>1.4</u>	<u>2.0</u>	<u>2.4</u>	<u>2.2</u>	<u>4.9</u>
	40.3	39.4	40.6	41.4	40.0
Commerce	2.8	3.2	2.9	2.9	4.3
Industry	4.9	6.8	6.1	5.8	8.4
Railroads	4.6	5.9	5.8	5.4	4.4
Streets	28.7	28.1	26.1	27.6	24.7
Parks & playgrounds	3.5	7.3	7.1	5.7	8.6
Other public & semipublic uses	15.2	9.3	11.4	11.2	9.6
	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Total Developed Land	100.0	100.0	100.0	100.0	100.0
Percentage of Total Area					
Developed	62.9	62.5	70.6	66.6	77.5
Vacant	36.0	35.2	25.8	29.7	20.4
Water	<u>1.1</u>	<u>2.3</u>	<u>3.6</u>	<u>3.7</u>	<u>2.1</u>
Total Land Area	100.0	100.0	100.00	100.0	100.0

Source: Harland Bartholomew, Land Uses in American Cities, Cambridge:
Harvard University Press, 1955, Appendix C.

Table 5

LAND USES IN SATELLITE CITIES

Use	10 Cities	10 Cities
	10,000-25,000	25,000 & Over
Residences:	Percentage of Developed Area	
Single-family	47.8	31.0
Two-family	1.8	5.3
Multi-family	<u>1.6</u>	<u>3.9</u>
	51.2	40.2
Commerce	2.1	3.1
Industry	1.6	13.6
Railroads	3.0	5.9
Streets	24.7	26.9
Parks & playgrounds	4.7	3.5
Other public & semipublic uses	<u>12.7</u>	<u>6.8</u>
	100.0	100.0
	Percentage of Total Surveyed Area	
Developed	62.2	77.1
Vacant	37.8	22.3
Water	<u>0.0</u>	<u>0.6</u>
Total	100.0	100.0

Source: Harland Bartholomew, Land Uses in American Cities, Cambridge: Harvard University Press, 1955, Appendix C.



Figure 27

OVERZONING

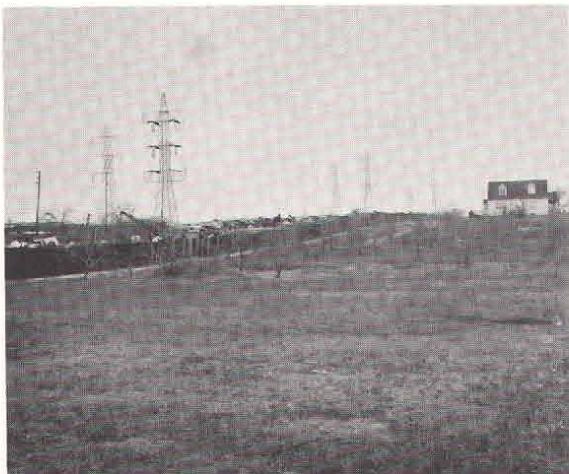
Figure 28

CORNER ZONING



Figure 29

CONFLICTS ALONG A
MUNICIPAL BOUNDARY



ever, that there is a limited market for large or estate type lots; and a limited number of families can assume the proper maintenance of such estates. Over-zoning for large lots may, therefore, only result in spotty underdevelopment and in subsequent requests for lot divisions.

UNDERZONING

Underzoning, just as overzoning, can create community development problems. Underzoning may be defined as the provision of inadequate land for certain necessary land uses. Inadequately sized zoning districts can inhibit the growth of a community and create monopolies for existing land uses. The zoning agency must, therefore, be realistic in determining the size of various districts in providing for future expansion. A common failure leading to underzoning is that of overlooking the fact that the entire urban area must be studied in preparing a zoning ordinance for a community. For example, adequate business districts must be provided in a city that serves as a trading center for surrounding villages and towns; and these districts must be determined on the basis of population distribution and disposable income levels beyond the corporate limits of the city being zoned as well as within those corporate limits.

As has already been pointed out, zoning is most effective when accomplished as an integral part of a comprehensive planning program. Good zoning requires almost as extensive planning surveys and studies as does the preparation of a comprehensive plan, and there is little economy in trying to do the zoning job alone. Particularly with respect to the problems of over and underzoning, the local plan commission will require the following basic planning data to properly determine zoning requirements:

1. Distribution of population within the community.
2. Past rate of population growth.
3. Estimates of future trends as to the number, character, and distribution of the population.
4. Estimates of future expansion or contraction of the various businesses and industries of the community.

STRIP ZONING

It was commonly held in the past that all lands fronting upon arterial streets and highways should be zoned for apartment or commercial development and that all land along railways or waterways should be zoned for industrial development (Figure 31). This belief resulted in strip zoning along major highways even out into undeveloped rural areas regardless of the actual demand for multi-family, commercial, or industrial land; and strip zoning is, in effect, a particularly detrimental type of overzoning. Strip zoning destroys aesthetic values along

major arterials; creates traffic hazards and congestion; encourages scattered development, indiscriminate use of outdoor advertising, and land speculation. It often results in marginal development and untidy vacant land along public ways and destroys the public investment in the highway facilities.

SPOT ZONING

Spot zoning may be defined as action by a zoning authority to give to a single lot or other small area of land privileges which are not extended to other land in the vicinity. Spot zoning is, in general, against sound public policy and obnoxious to the law. It is instantly suspect of being done to accommodate a particular interest and not for the general welfare of the community. It may grant a monopoly to one owner and makes the community vulnerable to similar spot zoning requests by various speculators who hope to multiply their profits at the expense of the community by the simple expediency of obtaining a change in the zoning district map (Figure 32).

The redistricting of small parcels of land can only be justified when it is done in furtherance of a general plan properly adapted for and designed to serve the best interests of the community as a whole. To permit local retail business in a small area within a residential district or to permit apartments in a small area within a single-family residential district may fall within the scope of overall community development plans and precise neighborhood unit development plans. Wisconsin courts have often condemned "spot zoning" of small areas but have sanctioned it when such use was not inconsistent with the existing zoning in the area and in accord with a comprehensive plan.⁹

CORNER ZONING

The commercial zoning of small parcels of land on corners of street intersections, once a very common practice to accommodate neighborhood taverns, grocery and drug stores, generally should be avoided. Such zoning often results in subsequent petitions for similar zoning on any remaining corners and for the extension of commercial zoning along abutting residential frontage (Figures 28 and 33). Commercial uses always generate a certain amount of pedestrian as well as vehicular traffic, and the placement of such uses on corners near intersections results in the creation of added traffic hazards and conflicts on each corner and pedestrian cross-traffic from one corner to another (Figure 34). It is recommended that commercial zoning districts encompass large enough areas so as to permit an integrated development with adequate off-street parking space and buffers for neighboring uses. Access driveways should be placed some distance from the street intersection (Figure 35).




BUFFERING

Buffering may be defined as the placement of an intermediate use between two clearly incompatible uses, such as between single-family residences and a noisy, unattractive industry (Figure 36). It has been common practice to use an inter-

Figure 30

OVERZONING

LEGEND

-  EXISTING COMMERCIAL ZONING
-  MAXIMUM FOR 175,000 PEOPLE
-  EXISTING COMMERCIAL DEVELOPMENT

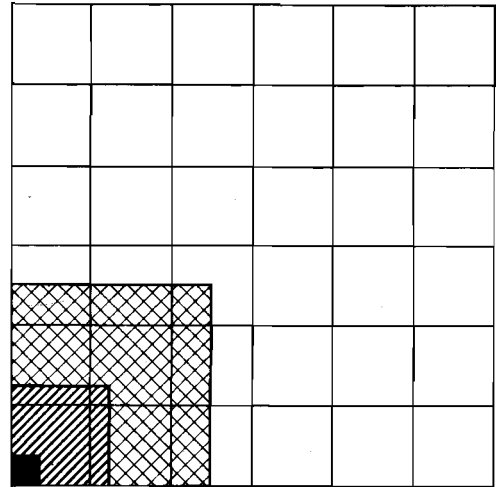


Figure 31

STRIP ZONING

LEGEND

-  INDUSTRIAL ZONING
-  COMMERCIAL ZONING

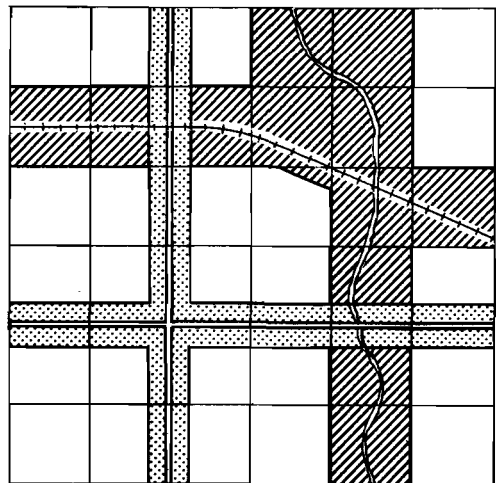


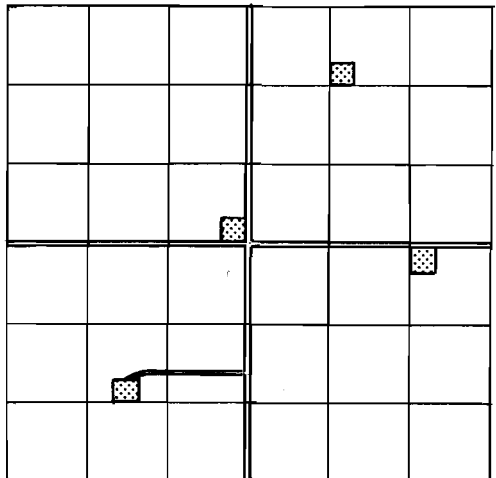


Figure 32

SPOT ZONING

LEGEND

-  RESIDENTIAL ZONING
-  SPOT ZONING



mediate zoning district as such a buffer; for example, the placement of a multi-family residential district between a commercial or industrial zoning district and a single-family district (Figure 37). The logic of such application of zoning districts as buffer zones may be questioned particularly in respect to the use of multi-family residences to buffer commercial and industrial districts. If the presence of a commercial or industrial district is harmful to the health, safety and welfare of a few families residing in single-family dwellings, its harmful effects are not minimized by replacing a few such families with many families residing in multi-family dwellings. More logically, buffers should consist of landscaped areas, screen plantings, fencing, topographic barriers, or simply adequate amounts of space which serve to protect residences from the traffic, noise, vibration, glare, and poor aesthetic qualities of neighboring commercial or industrial establishments (Figure 38).

REGULATION OF UNDEVELOPED LAND

Zoning authorities, desiring to regulate community growth in an orderly manner by placing development in both time and space on a priority basis, are often faced with the problem of just how far in advance of development should land be zoned. This is particularly true in communities wherein land may be in rapid transition from farms to urban uses as, for example, in townships lying on the outer peripheries of larger metropolitan areas. Immediate zoning of large tracts for residential development in accordance with a long-range land use plan that has been prepared for conditions that are anticipated 20 or 30 years into the future often results in scattered development. Such development causes many problems in the efficient provision of municipal services. If the necessary zoning is premature, the property may have to remain unimproved and unproductive and a source of expense to the owner for an unreasonable period of time or must be put to some nonconforming use. Yet without appropriate zoning restrictions, the self-interest of the individual property owners will inevitably dictate the overall development of large undeveloped tracts of land, sometimes to the detriment of the general welfare of the community (Figure 1). Possibly valid devices to hold large tracts of land in proper use until development occurs include:



1. Placement in an exclusive agricultural district in which farming only is permitted (Agricultural Holding District).
2. Placement in an estate type residential zone with careful control of street and lot layouts so that future subdivision or resubdivision to normal urban densities is possible (Residential Holding District).
3. Temporary use permits.

The first two of these devices represent holding districts and have as their objective the orderly development of a community in stages and contiguously outward from the developed urban service areas. A holding district seeks to re-

Figure 33

COMMERCIAL ZONING AT STREET INTERSECTIONS

LEGEND

-  COMMERCIAL REZONING REQUESTS
-  EXISTING COMMERCIAL DEVELOPMENT

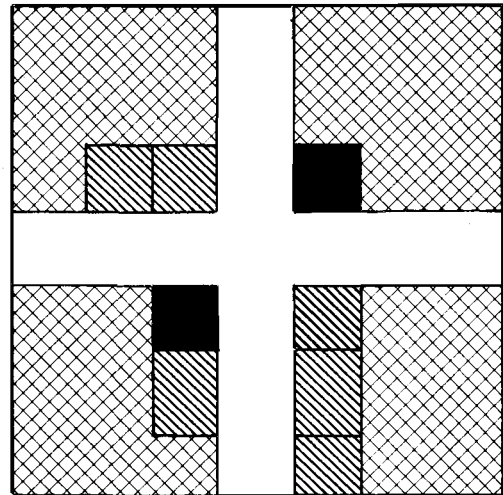





Figure 34

TRAFFIC CONFLICTS AT STREET INTERSECTIONS

LEGEND

-  DRIVEWAYS
-  24 EXISTING TRAFFIC CONFLICTS
-  20 ADDITIONAL TRAFFIC CONFLICTS

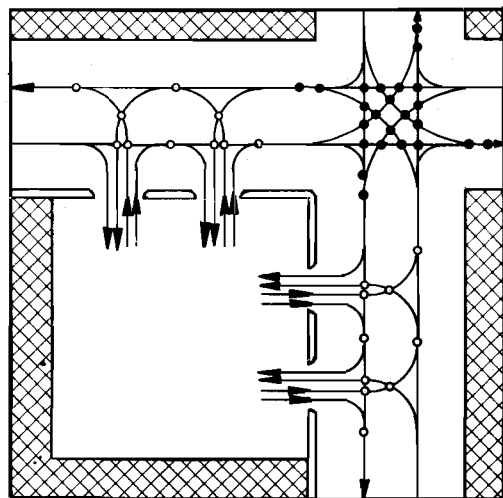





Figure 35

INTEGRATED COMMERCIAL DEVELOPMENT

LEGEND

-  DRIVEWAYS
-  COMMERCIAL STRUCTURES
-  BUFFER

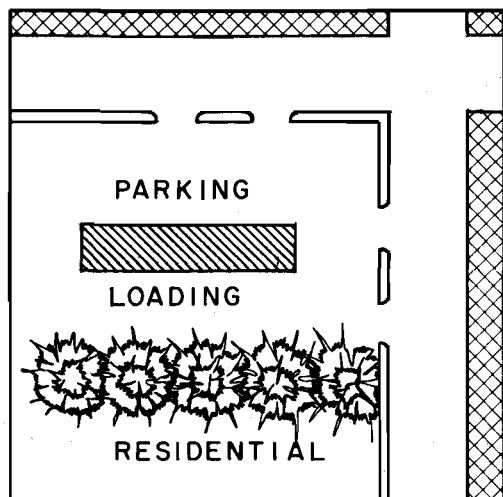


Figure 36

LACK OF BUFFER BETWEEN INCOMPATIBLE USES

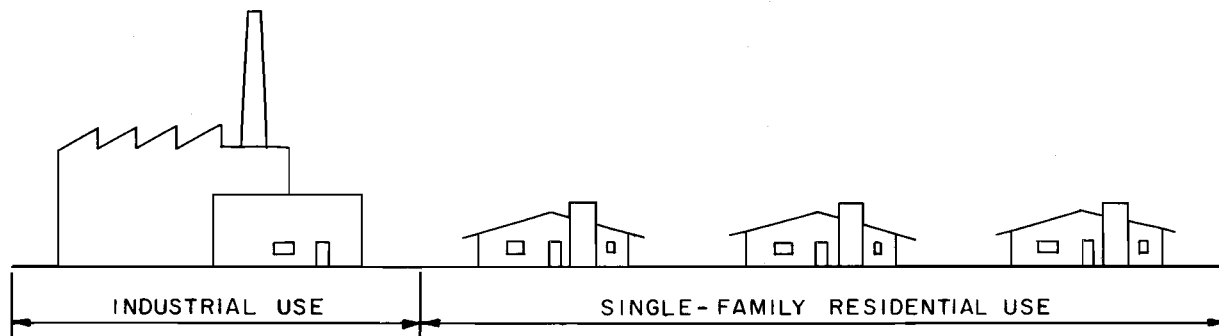


Figure 37

IMPROPER ZONING DISTRICT BUFFER

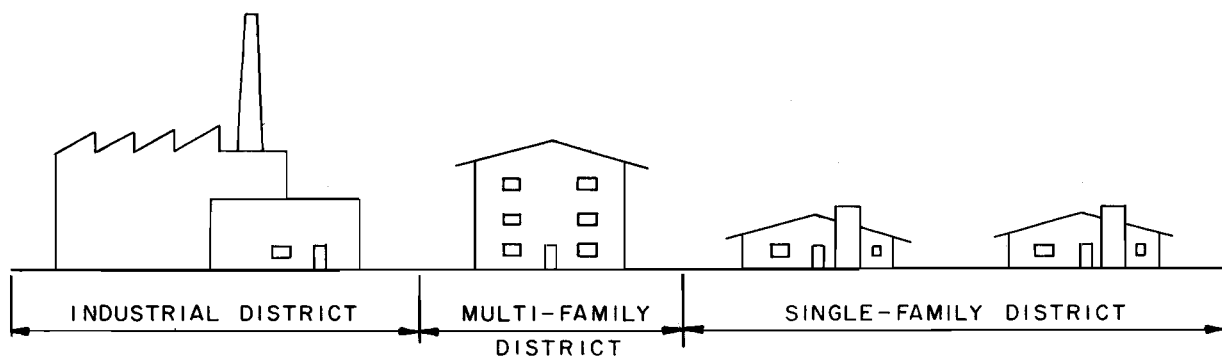
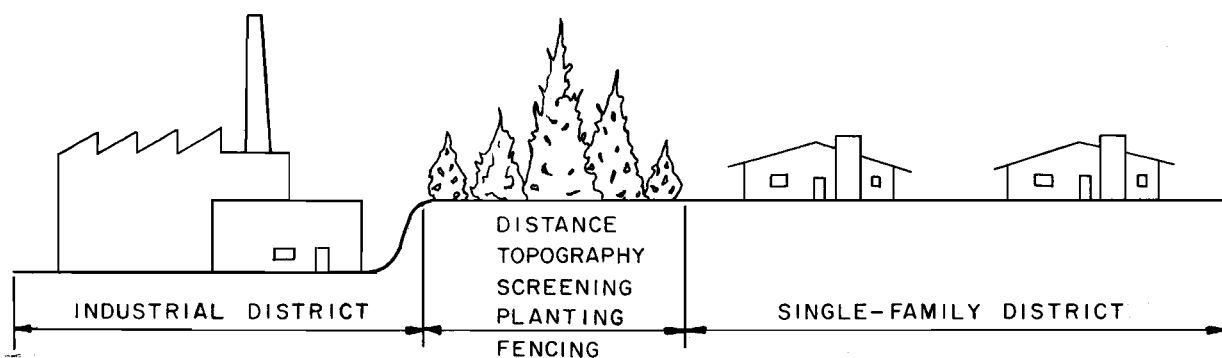


Figure 38

PROPER BUFFERS BETWEEN USES



tain land in a less intensive use until the time is appropriate for intensive development. The holding district should be exclusive so as to avoid any possibility of mixed use development (Figure 10).

NONCONFORMING USES

No matter how carefully the district boundaries are drawn or the district regulations adjusted certain existing land uses and structures will not conform to the use, height, yard, or area regulations prescribed for the district in which they are located. The state enabling act permits certain uses of buildings and premises existing at the time of adoption or amendment of the zoning ordinance to continue even though they do not meet the provisions of the ordinance. Such uses are termed nonconforming uses. It should be noted that structures may also be nonconforming as to height, area, or yard regulations. Such structures are termed nonconforming structures.

Ideally, every zoning ordinance should contain provision for the eventual elimination of nonconforming uses and structures without causing undue hardship to the owners. This problem has as yet, however, not been satisfactorily solved. The state zoning enabling act provides for the elimination of nonconforming uses only through their discontinuance by the owners or through their destruction by fire, windstorm, or flood. This approach is passive and has not been very successful in eliminating nonconforming uses. In some cases their monopoly in an area has actually encouraged the continuance of nonconforming uses and has even resulted in their continuance in a rundown condition so as to comply with the statutory "50 percent" repair limitation. Except in the case of airport zoning, the state enabling legislation makes provision for the removal of nonconforming structures.

Rather than simply waiting for the discontinuance or for the substantial destruction of nonconforming uses to occur in order to effect their elimination, the community may in certain cases remove such nonconforming uses through:

1. Purchase with possible resale after removal of nonconforming feature.
2. Removal through nuisance law action.
3. In the case of airport zoning only, eminent domain.
4. Provision for the elimination of nonconforming uses by appropriate provisions in the zoning ordinance which would provide for the amortization of such uses over a reasonable period of time.

Such amortization of nonconforming uses must, however, be specifically permitted by state enabling legislation in order to be legal; and the Wisconsin enabling legislation presently contains no provision for such amortization. The

board of zoning appeals has power to permit the substitution of more restrictive nonconforming uses for existing nonconforming uses; but once an owner requests and is granted such a substitution, the protection afforded the original legal nonconforming use is not extended to the new substituted nonconforming use.¹⁵

In contrast to legislative weaknesses relative to the removal of nonconforming uses, strong prohibitions on the expansion thereof are provided in the state enabling legislation; and nonconforming uses should not be permitted to be extended, enlarged, or reconstructed unless made to comply. The enabling act restricts structural repairs or alterations to a nonconforming building during its life to 50 percent of its assessed valuation; and if a nonconforming use is discontinued for a period of 12 calendar months, any future use must be conforming.

Zoning agencies, while preparing zoning district maps, have also been known to attempt to accommodate what would otherwise be nonconforming uses by encompassing them in small districts similar to spot zoning. The following questions may be helpful in determining the advisability of this practice:

1. Does the neighborhood require the services being provided by the existing use, or may those same services be better obtained from other nearby areas?
2. Is the present use well maintained, and does it have space for adequate off-street parking?
3. Is there adjacent land that could be subsequently zoned to permit expansion of the use?
4. Does the use add to the aesthetic and cultural qualities of the neighborhood?

SUBSTANDARD LOTS

Existing lots of record that do not meet the frontage and area requirements of the zoning ordinance present another common problem. Some use must be permitted on these lots so as not to deprive the owner of his property rights. Therefore, single-family dwellings are often permitted on single substandard legal lots of record provided that any such contiguous lots are not in common ownership. All the district regulations must be complied with insofar as practicable, and minimum requirements should be specified. The substandard parcel should also be one that was legally created; that is, that met the requirements of applicable zoning and land division ordinances at the time it was created.

ZONING AS AN INTERGOVERNMENTAL PROBLEM

Careful consideration should be given in the drafting of zoning regulations and delineation of zoning district boundaries to conditions in adjoining municipal

areas in order to avoid creating land use conflicts along municipal boundary lines. Many examples exist of incompatible and conflicting zoning along municipal boundaries within southeastern Wisconsin (Figure 29). Such conflicts can be avoided only through a spirit of willing cooperation between elected and appointed governmental officials.

Related to this problem is the problem of the complete exclusion of certain uses from certain communities within a metropolitan area. Such complete exclusion is known as "dumping," and the excluded uses are forced to locate in other communities or in unzoned areas. Dumping has been commonly applied to multi-family, certain institutional, commercial, and industrial uses and occasionally to mobile homes. As applied to institutional uses, "dumping" has commonly affected churches; public, private and parochial schools; and cemeteries.

The complete exclusion of certain uses from local communities has been upheld in the courts. Complete exclusion of certain uses should, however, be provided only after the most careful consideration. With an increase of zoned communities in an urbanizing region, the courts, recognizing that within such a region space must be allotted for certain necessary but often deemed undesirable uses, may declare this practice illegal if it is done in a discriminatory and unreasonable manner.

AGREEMENTS AS A CONDITION OF REDISTRICTING

A municipality has no power to make any agreement which will in any way decrease its legislative powers and duties. The police power of the municipality is not subject to limitation by private contract nor is the exercise of such power to be bargained or sold away by any agreement or device. In recent years some municipalities have rezoned single parcels of property, based in part upon agreements wherein the owner of the property, in consideration of the rezoning, agrees either to make a conveyance of some of his property to the municipality for public purposes or to enter into an agreement which is recorded restricting the use of some of his property. Where such practice is inconsistent with and disruptive of a comprehensive zoning plan, the courts in other states have often but not universally held such arrangements unauthorized.

Private agreements have also been used in conjunction with amendments to a zoning ordinance in order to avoid:

1. Amending the zoning ordinance to provide a larger number of districts,
2. Mixing incompatible uses in a smaller number of districts,
3. Spot zoning, or
4. Permitting numerous variations to the terms of the ordinance.

Some municipalities within the state and in neighboring states have approved a zoning district change on the provision that the owner-applicant record covenants running with the land specifically prohibiting objectionable uses which are normally permitted in the lower district being requested. The recording of such covenants may require the owner-applicant to alienate his property to a third party and reacquire it subject to the covenants which provide that their terms are to the benefit of and may be enforced by the municipality. While this approach may be legal, its desirability is questionable. The very need for the approach indicates inadequacies in the existing zoning ordinance and a need for comprehensive zoning revisions. If the proposed uses commonly giving rise to "contract zoning" are similar to other uses permitted in a given district, the district regulations should be amended to include such uses. If the proposed uses are compatible, but may cause special problems, the ordinance should be amended to provide for the troublesome uses as conditional uses. If the petitioner requires area, yard, or height modifications, his course should be to appeal to the board of zoning appeals for a variance. If the proposed uses are incompatible with uses in any existing district, consideration should be given to the creation of a new district classification.

In this respect it should also be noted that zoning ordinances do not generally alter private deed restrictions and that, if public zoning regulations and private deed restrictions are conflicting, whichever provision is the more restrictive will normally prevail. Private covenants, however, which are in direct conflict with zoning requirements are not valid as they are actually illegal contracts.

HIGHWAY PROTECTION

The development of mass automotive transportation with its accompanying demand for high traffic capacity and high service level facilities has led to the establishment of modern highway networks having as integral elements freeway and expressway type facilities. Such freeway and expressway type facilities require large investments of public capital, not only for construction and the land they occupy, but for the purchase of access rights from abutting property owners in order to protect these facilities from the encroachment of urban development as well as to control the location of access points. If this investment of public capital is to be protected and the design capacities and service levels of these high type facilities preserved, the local units of government will have to meet the responsibility of protecting these facilities through sound zoning. Such zoning must be applied not only to land along the facilities themselves, but to land along intersecting arterial streets and highways as well. To allow uncontrolled development of land along the intersecting arterial streets and highways in the vicinity of interchange points with high type facilities can create traffic congestion of such a degree that even the freeway and expressway facilities themselves may be adversely affected.

Each interchange on a freeway or expressway is designed in accordance with

established engineering criteria to provide a given design capacity for each roadway and ramp. This design capacity is in part determined from assumptions concerning the land use which will reasonably occur in the areas serviced by the interchange. The uncontrolled development of substantial traffic generators adjacent to such interchanges at variance with the design assumptions may create such additional traffic load as to cause the design capacity to be exceeded and a functional breakdown to occur. Such breakdown not only affects the highway facilities themselves but the adjacent land uses as well. Sound land use control in relationship to such interchanges is required to avoid such an undesirable situation.

Regulation of the use of and access to lands that abut and adjoin freeways, expressways, and controlled access arterial streets and highways, their turning roadways, and their intersecting streets and highways is, therefore, necessary to provide for the safe and efficient functioning of these facilities and for the sound development of land in relationship thereto. Such regulation may be accomplished through any one or any combination of the following:

1. Acquisition of the fee interest in, the development rights of, or easements over adjoining properties.
2. Regulation of access through subdivision control ordinances.
3. Provision for frontage and other auxiliary streets through official map ordinances.
4. Restriction of access by special local ordinances or state regulations.
5. Control of access and land use through zoning ordinances.

Zoning ordinances may regulate access and land use with respect to freeways, expressways, and controlled access arterial streets and highways by any of the following:

1. Restriction of access to not only the freeways, expressways and controlled access arterial streets and highways, but also to their turning roadways, and their intersecting streets and highways through the traffic, parking, and access control provisions of the zoning ordinance.
2. Provision of highway service districts along certain freeways, expressways, controlled access arterial streets and highways and their intersecting streets and highways at intervals necessary to provide drivers, passengers, and vehicles with those services necessary for travel. Such districts are particularly necessary when service facilities are not integrated into the freeway, expressway or controlled access highway facilities. Ac-

cess restrictions would be a necessary supplement to the zoning regulations for all other districts that may be adjacent to or oriented toward the freeway, expressway, or controlled access highways under this approach. Moreover, the successful application of this approach requires a comprehensive plan not only for the highway service areas but also for all other adjoining traffic generating development, particularly commercial and industrial areas, and for the arterial street and highway system itself.

3. Provision of interchange overlay districts to be placed around existing and proposed highway interchange areas which provide special access and land use regulations in addition to those provided in the underlying districts.
4. Provision of highway interchange protection districts placed around existing and proposed highway interchange areas which permit almost all uses subject to review of the responsible highway authorities and the board of zoning appeals. This approach has the marked disadvantage of not being definitive as to future land use.
5. Provision for specific review and approval by the local planning agency and the responsible highway authorities of all development permitted in any district when such district lies adjacent to a freeway, expressway, or certain designated arterial streets and highways. In effect, all uses adjacent to designated arterial streets and highways under this approach become conditional uses and require a conditional use permit. This approach together with access control is the one presented in the model ordinance (Appendix A).

CONCLUSION

The preceding discussion has touched on only a few of the more common problems encountered by zoning officials today. As community development no longer falls easily into sharply defined districts, zoning is becoming increasingly complex. New developments in shopping centers, garden apartments, industrial parks, off-street parking, and cluster developments are creating a need for new zoning concepts, many of which are experimental and all of which tend to make more complex the enactment and administration of a good zoning ordinance. The application of the neighborhood unit concept and the development of subdivisions covering entire neighborhoods require that the relationship between the range of housing types, shopping facilities, and recreation areas be set by good design, not by rigid specification. Zoning must not only protect and maintain the value and character of existing development but encourage new comprehensive land development. This changing situation requires a clear understanding of the basic principles and objectives of zoning on the part of public officials responsible for the adoption and administration of one of the most common and important plan implementation devices.

Chapter VIII

FLOODWAY AND FLOOD PLAIN REGULATIONS

Rivers, streams, and watercourses within the Region have from time immemorial overflowed their banks and taken possession of their natural flood plains. Before intensive urban development occurred within the Region, such flooding was accepted as a natural course of events; and it was recognized that the rivers would in time revert to their normal channels leaving their flood plains high and dry and suitable for certain agricultural purposes. Urban development has in many areas of the Region been allowed to preempt the natural flood plains of the streams, often without regard to the periodic flood hazards and concomitant damage to property, danger to human life, and danger to the public health. Thus, increasing urbanization has brought with it an increasing demand for flood control.

Instead of adjusting the land uses permitted within the natural flood plains to the needs of the streams at certain periods of the year, the practice has commonly been to permit, often inadvertently, all types of development within natural flood plains, thereby creating a flood problem. The manifestation of the problem soon leads to a demand to control flood damage through the construction of often expensive protective public works, such as detention reservoirs, channel improvements, by-pass channels, flood walls, and levees. As urban development proceeds on an areawide basis over a large Region, such as southeastern Wisconsin, such an approach can only become self-defeating since the number of persons and value of property in the path of flood waters is bound to increase at a rate more rapid than that at which protection through public works construction can be provided.

A sound long-range solution to the flood control problem in those watersheds of the Region in which urban development has not yet reached the stage necessitating the construction of flood control works must recognize the need to protect the floodways and flood plains of the natural stream systems from encroachment by incompatible urban uses. Such protection should be an integral part of an overall plan for community development and can be carried out through such land use controls as zoning, subdivision regulation, and official mapping. Through zoning, lower flood plain areas can be set aside for agriculture, recreation, parking, and such other open land uses as are not subject to substantial flooding damages and a balance accomplished between land use and flood flows.

BASIC CONCEPTS

Regulation of land use within natural flood plains must be based on consideration of the limits of water control facilities to regulate natural phenomena, of the legal and politically feasible limits of regulating private land use in the public

interest, and on rational approaches to the enforcement of regulatory measures.

The cross-section of a stream valley can, for land use control purposes, be divided into three principal zones (Figure 39):

1. The floodway zone,
2. The flood plain zone, and
3. The remainder of the valley beyond the limits of periodic inundation.

The floodway is that area of the valley required for actually passing flood waters. Velocities are greatest and most damaging in this area, and obstructions or encroachments that restrict the discharge capacity of the floodway should be prohibited. The flood plain is that part of the stream valley beyond the floodway in which inundation may occur but where depths and velocities are generally low. The flood plain area, as contrasted to the floodway area, does not contribute substantially to the passage of flood waters down the valley, although it does permit varying amounts of valley storage. Development may be permitted in the flood plain areas as long as such development is compatible with the intermittent use of the flood plain for valley storage.

These two zones--the floodway and the flood plain--both require land use regulation if flood control problems are to be avoided but must be treated differently in any zoning ordinance. The remainder of the stream valley beyond the flood plain requires no special land use regulation for flood purposes. Floodways should be zoned for the primary purpose of passing flood waters and for other limited uses that do not conflict with this primary purpose. Designated flood plains should be zoned to permit such land uses as are compatible with periodic storage of flood waters, and the minimum elevations above which development must be constructed to reduce property damages and hazards to life and public health should be specified.

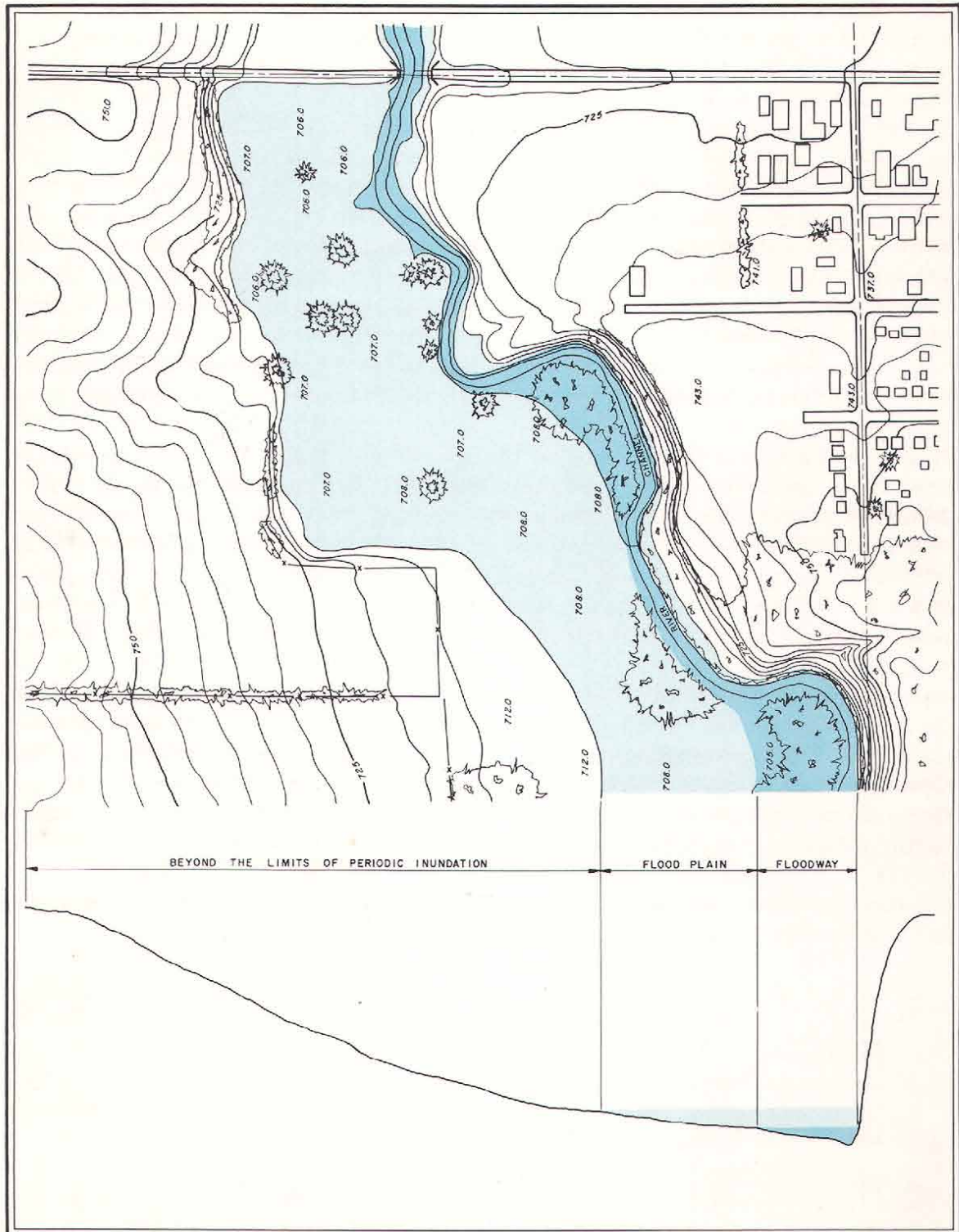
Floodway and flood plain regulations may be incorporated as an integral part of the local zoning ordinance and should have two objectives:

1. Assure the protection of the required floodway area from encroachment without unduly raising flood heights, while permitting completed or proposed flood control works to accomplish their design purposes.
2. Encourage sound land use in the flood plain area consistent with the flood hazard and overall community land use needs and objectives.

[Floodway and flood plain regulations must be based on sound legal principles and must be supported by adequate technical data. They should be comprehen-

Figure 39

FLOODWAY AND FLOOD PLAIN ZONES



sive in scope, treating all areas with similar flood hazards alike.

DELINEATION OF FLOODWAY AND FLOOD PLAIN DISTRICTS

The portions of the natural stream valley to which land use regulations are to be applied to protect the floodways and flood plains should be determined primarily by the flood hazard related to specific flood occurrences. Such determination must be based upon careful flood studies, and such studies should constitute the basis upon which areas are determined to be suitable or unsuitable for various land uses. Attempts to allocate land uses to areas subject to flooding without reference to flood studies may well result in severe development problems. Such studies are also necessary in planning public services and facilities to be located in floodways and flood plains. Bridges and roadbeds need to be located at elevations which will preclude their being inundated during floods. The waterway openings of bridges and culverts need to be sized to handle flood flows. Schools and other public buildings need flood-free locations. Sanitary and storm sewers need to be designed to meet flood conditions. Water, power, and communications facilities must be designed to function during flood periods.

Flood studies should collect data on the hydrologic and hydraulic characteristics of the stream system, including historic flood height and discharge measurements from which flooding magnitudes, expected flood frequencies, stage-discharge relationships, flood profiles, and flood velocities can be derived. The collection of such data requires the installation and operation of a stream gaging network consisting of staff gages, flood crest gages, and continuous flow recording gages as well as the analysis of existing hydrologic and meteorologic data.

A physical inventory of the stream channel should be made as a part of the flood studies to determine existing flow capacities and should include data on: culverts and bridges, including number and width of spans, and deck and guard rail elevations above stream bed; dams and encroachments, including heights and overflow sections; historic high water marks, and stream profiles and cross-sections showing the main channel and its relationship to the natural flood plains.

Information on past floods and other engineering data related to the flood problem can be obtained from the following sources:

1. Corps of Engineers, U. S. Army, particularly from this agency's flood plain information and flood control studies.
2. Geological Survey, U. S. Department of the Interior.
3. Weather Bureau, U. S. Department of Commerce.
4. Soil Conservation Service, U. S. Department of Agriculture.
5. State, county, city, village, and town engineers.

6. Watershed planning studies conducted by the Southeastern Wisconsin Regional Planning Commission in cooperation with local units of government.

The impact of possible future floods can usually best be understood by the public through comparison with the impact of past floods; and the flood history of the stream under consideration should, therefore, be carefully analyzed. In addition, however, the flood potential of the stream under consideration, which may be changed markedly by either changing land use patterns within the watershed or by man-made improvements in the channel capacity and which may not be reflected in the historic record, must not only be analyzed but must be emphasized in any flood plain zoning study. Changes which may markedly affect historic flood hazards include the construction of upstream storage reservoirs, natural or man-made channel modifications, the construction of flood walls and levees, or any encroachments on the natural floodway. Changing land use patterns within a watershed, particularly within smaller watersheds, may also have a marked effect on flood hazards by increasing the volume of flood waters to be handled and by decreasing the time of concentration to any given point on the channel system.

The selection of the floods to be used as a basis for land use control is one of public policy and is dependent upon many planning and engineering considerations. In the final analysis, the floods to be adopted as defining the floodway and flood plain zones must be based upon sound engineering studies. With the data from such studies in hand, the local planning or zoning agency can then consider present and future land use requirements, as well as various methods of preventing flood damages, and outline a policy pertaining to the protection of floodways and flood plains.

Because of the many variable conditions encountered throughout the Region, no specific guidelines can be laid down for the selection of floods to be used as a basis for the enactment of floodway and flood plain zoning. The determination of 10, 25, 50 and 100-year recurrence interval floods probably represents the best practice and enables the local governing body to make sound value judgments as to which of these flood magnitudes should be used to delineate the floodway and flood plain zones. Another approach is to use the magnitude of at least two floods susceptible to rather definite determination: the greatest flood of record and the greatest flood which may be expected with a coincidence of the most critical conditions that have been experienced over a wide area. The former may have been a rare event because of its great magnitude, or it may have been only slightly greater than floods that occur frequently. The category in which it falls must be determined by hydrologic studies. The latter is known by the Corps of Engineers as the "Standard Project Flood"; and it is commonly used in the design of reservoirs, dams and local flood control and protection works.

Engineering considerations involved in the choice of various flood magnitudes

involve alternatives respecting relative probable recurrence intervals, relative areas inundated, and relative differences in the depth and velocity of inundation. Planning considerations having an important bearing upon the flood magnitudes and flood zones selected include economic pressure on the use to which overflow lands are put, available alternatives in the immediate area for the same uses, the type of flood plain regulations contemplated, and the extent of resistance of property owners to land use controls.

Floods to be considered in determining designated floodways and flood plains must be large enough to demonstrate the adverse effect of possible future encroachments. It is neither sound engineering nor effective planning practice to set flood standards so low as to produce regulations which condone existing encroachment and invite further poor land use development. On the other hand, if the flood magnitude selected for zoning purposes is too large or not adequately supported by a sound engineering study or supported by inaccurate generalized data, the regulations may impose uneconomical restrictions on land use and constitute an unreasonable invasion of private property rights.

A hydrologic and hydraulic engineering study, to be utilized as a basis for enactment of flood plain regulations, should as a minimum include typical flood hydrographs, typical channel and flood plain cross-sections, water surface profiles, overflow maps for selected floods, and information on known historic floods. The overflow maps are probably the most understandable to the public of all the exhibits in a hydrologic and hydraulic engineering study report.

The primary purpose of an overflow map is to accurately and precisely delineate the areas subject to inundation by selected floods for which the water surface profiles have been determined (Figures 40, 41 and 42). To be most effective, within an urbanizing region, the overflow maps should be prepared at a scale of not less than 1 inch equals 200 feet with a vertical contour interval of not less than 4 feet. Such maps should be based on a monumented control survey network relating the U. S. Public Land Survey system to the state plane coordinate system in order to permit the proper correlation of hydrographic and topographic data with property boundary line data. These overflow maps provide the basis for the delineation of floodway and flood plain districts.

The Southeastern Wisconsin Regional Planning Commission's work program recognizes the need to consider watersheds as rational planning units if sound solutions are to be found to water related resource problems within the Region. Consequently, the SEWRPC is, through local watershed committees, carrying out in certain watersheds within the Region the hydrologic and hydraulic engineering investigations necessary to the preparation of flood hazard and land reservation maps adequate to provide a basis for sound local floodway and flood plain zoning.

Figure 40

OVERFLOW MAP FOR 25-YEAR FLOOD

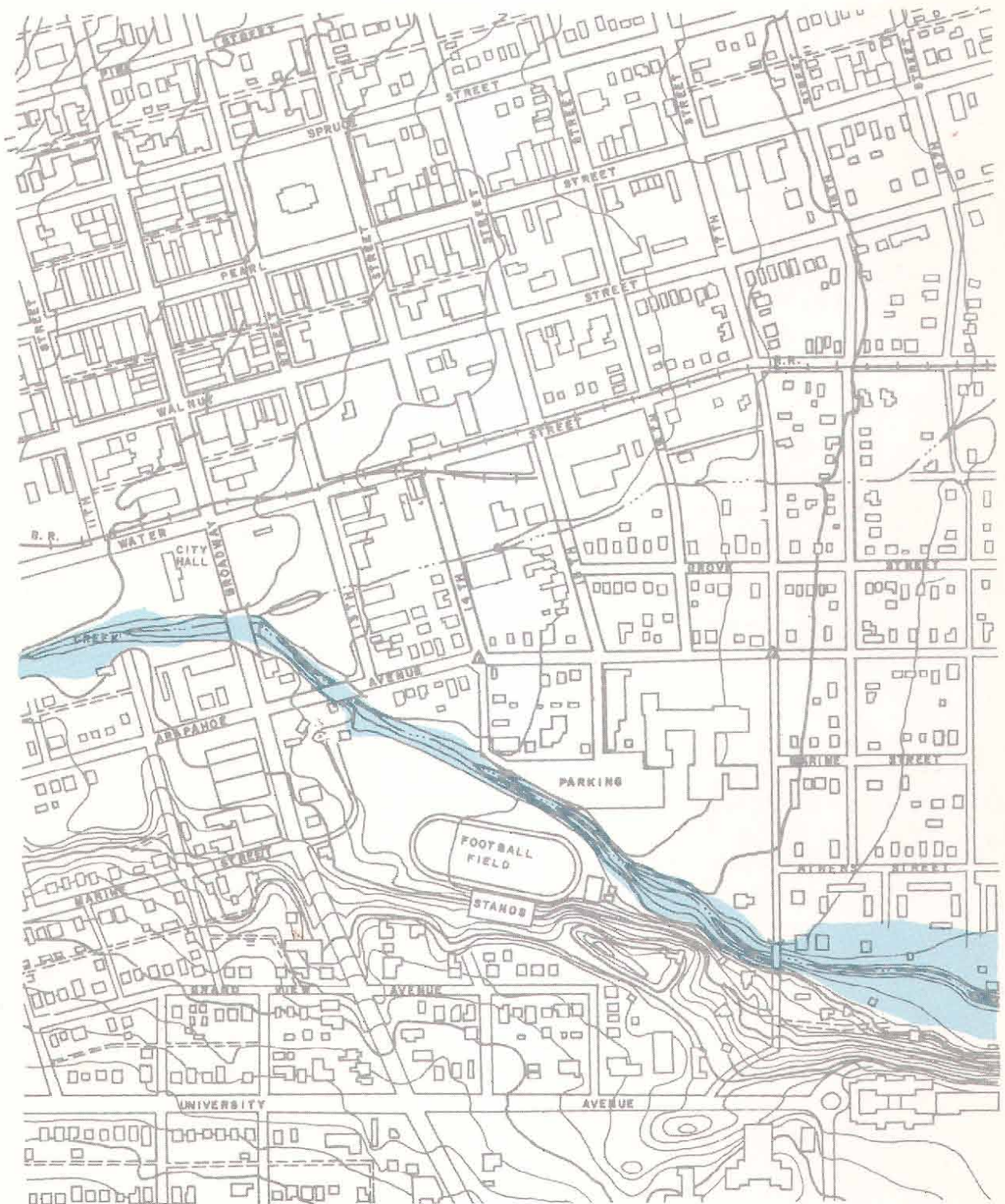


Figure 41

OVERFLOW MAP FOR 50-YEAR FLOOD

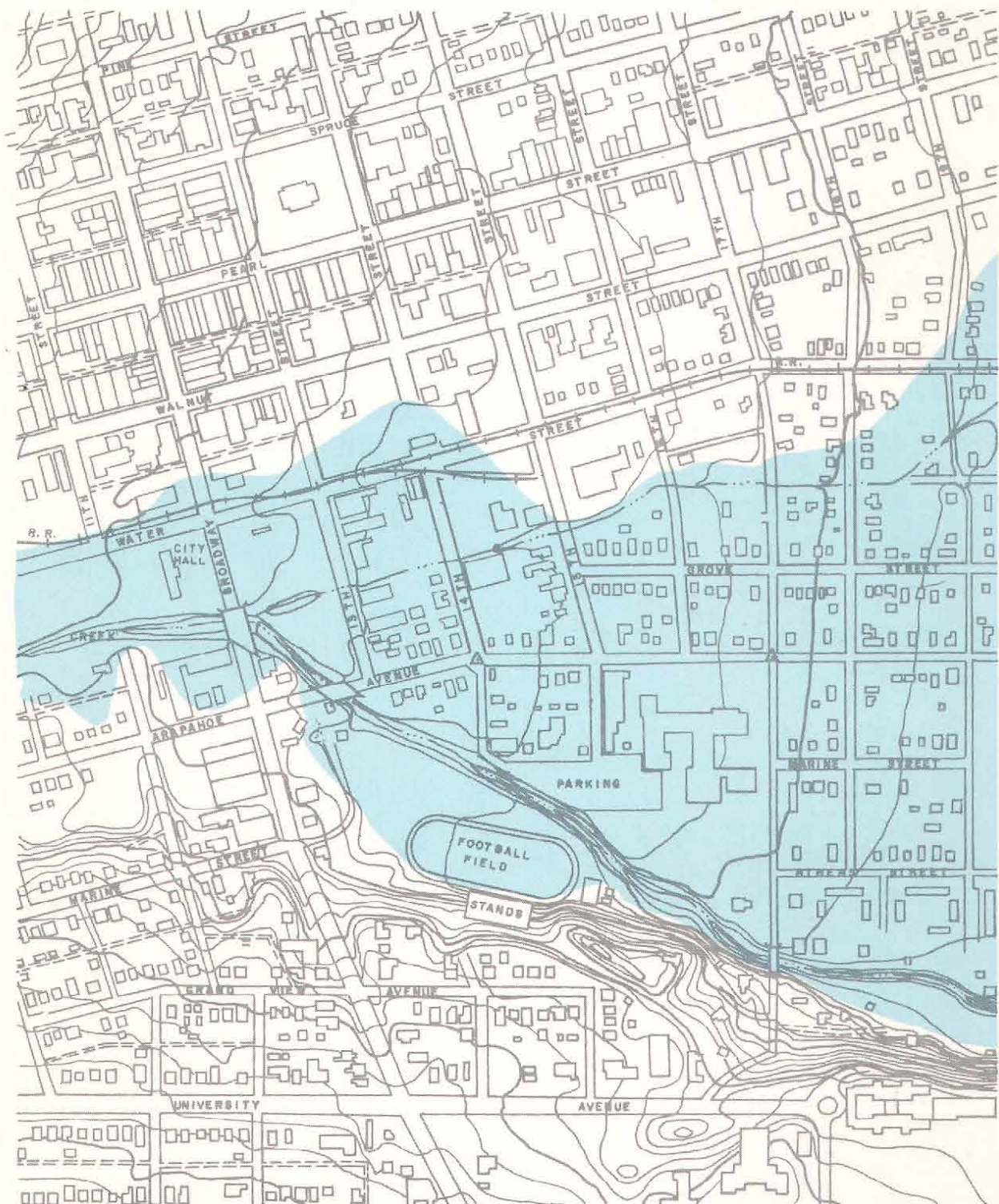
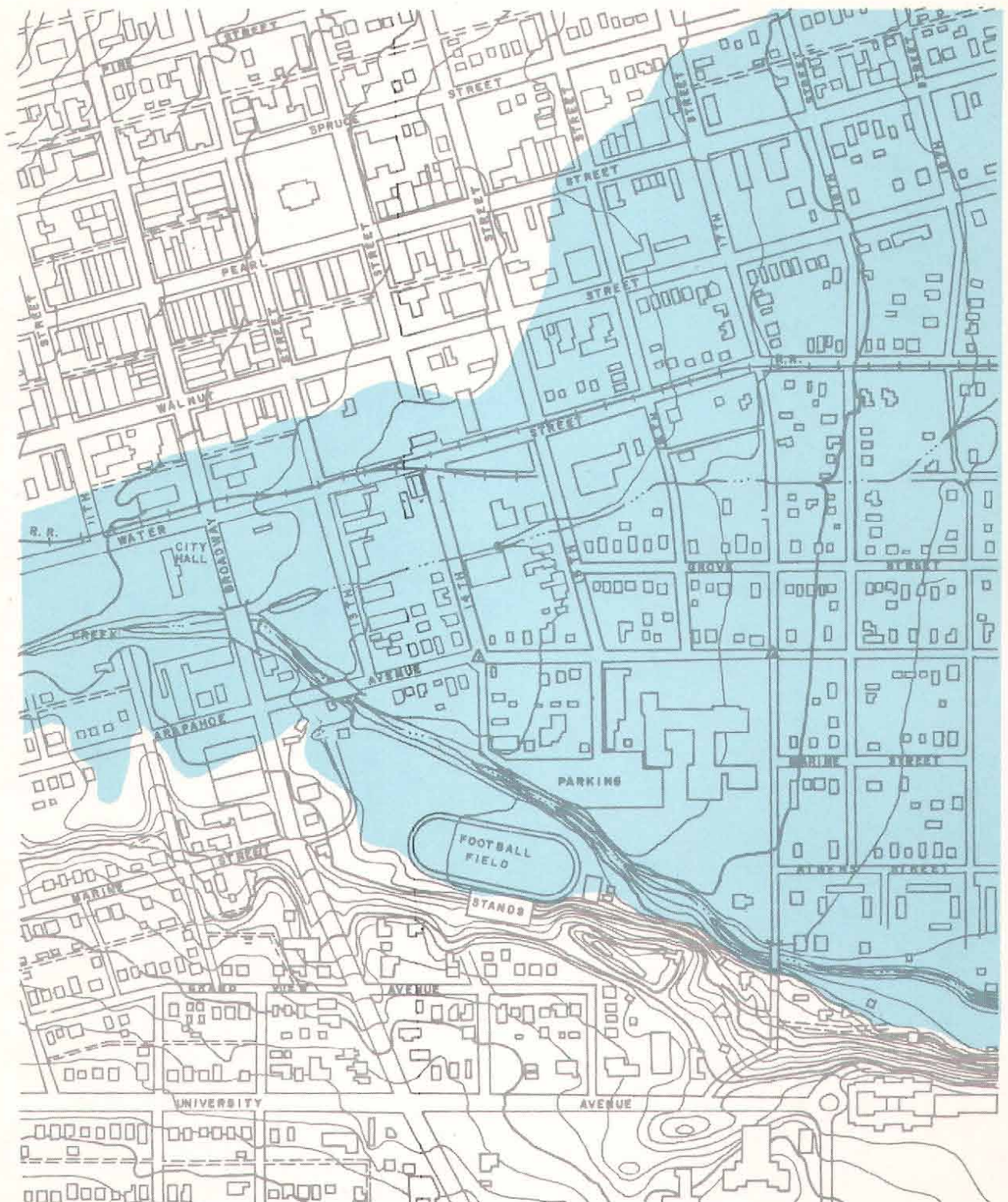


Figure 42

OVERFLOW MAP FOR 100-YEAR FLOOD



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Chapter IX

ADMINISTRATION

Good zoning administration and enforcement is essential to the success of a zoning ordinance and the land use plan it is designed to implement. The zoning ordinance if poorly administered and laxly enforced will become meaningless to the community and incur the disrespect of its citizens. Therefore, the selection and appointment of a Zoning Inspector, who is charged with the administration and enforcement of the zoning ordinance, is extremely important.

ZONING INSPECTOR

The only municipal officer that a substantial number of citizens will have occasion to be in contact with, in respect to planning and zoning matters, is the Zoning Inspector; and it is, therefore, essential that a person of competence and tact be appointed to this important position by the governing body. He should be one who understands the purpose and practice of zoning and is completely familiar with the provisions of the zoning ordinance. It is desirable that he be appointed prior to the adoption of a new zoning ordinance so that he may participate in the zoning agency's deliberations and thereby become completely familiar with the ordinance.

A full-time Zoning Inspector, able to devote sufficient time to the efficient administration of the zoning ordinance, is desirable; but if the number of zoning permits being issued is small, a combination of the positions of building inspector and zoning inspector is logical and is most frequently used. Counties often designate such zoning inspector a Zoning Administrator and grant him power to designate Town Building Inspectors as deputies for the purpose of receiving applications for zoning permits and making field inspections. In all cases specific administrative regulations should be prepared to guide the Zoning Inspector in the performance of his duties. These specifically include the following:

1. The review of all applications for zoning permits to ensure compliance with the ordinance's regulations.
2. The granting or denial of the permit.
3. The inspection of new construction or uses to ensure compliance with the ordinance.
4. The investigation of alleged zoning violations.
5. The extension of zoning information, assistance, and advice to interested citizens upon request.
6. The keeping of appropriate records.

All zoning inspectors and their deputies should be given the following power and authority:

1. To enter, at any reasonable time, any public or private lands or waters for the purpose of making an inspection thereof.
2. To revoke any permit or issue a cease and desist order when there is reason to believe a violation of the zoning ordinance exists.
3. To commence any legal proceedings necessary to enforce the provisions of the zoning ordinance.

It is extremely important that the Zoning Inspector recognize that his duty is to process and decide each application before him in strict compliance with the text of the zoning ordinance. He has no discretionary powers and cannot modify, vary, alter, or adjust any regulations of the zoning ordinance.

ZONING PERMIT

The chief device used to enforce compliance with the zoning ordinance is the zoning permit. Such a permit should be required before any structure, land, or water is to be used or before any structure or part thereof is to be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered. This permit may take the form of a separate zoning permit, but usually is combined with the building permit used to permit erection of a structure. In addition, a certificate of occupancy should be used to permit occupancy or use of a structure after it is erected or to permit a change to an existing use where no construction is involved in such change.

The following minimum information should be required on an application for a zoning permit: the name and address of the applicant, the location and existing and proposed use of the premises and structures, the zoning district classification, and a plat of survey accurately showing among other things the location of all existing and proposed structures and off-street parking facilities (Appendix C). The Zoning Inspector should deny the permit if the proposed use or structure does not comply with the zoning ordinance or if he has some doubt as to the meaning or interpretation of the zoning ordinance in the case in question. This denial should be in writing; and the applicant is then entitled to petition the Board of Zoning Appeals for a variance, clarification, or interpretation (Appendix D).

PERMITS ISSUED IN ERROR

Should the Zoning Inspector erroneously issue a permit authorizing a use not permitted in the district or a structure which does not meet the regulations of the zoning ordinance, such a permit is null and void in most states. The courts have reasoned that a permit issued under a mistake of fact or in violation of law

confers no rights or privileges upon the grantee. At least one Wisconsin case suggests that the generally accepted rule might not be followed here.¹⁷ Some attorneys, however, believe that Wisconsin will follow the other states when the issue is next presented. The Zoning Inspector may revoke the permit, and the fact that money has been expended for the permit by the grantee is not pertinent since the permit was void and no rights could accrue.

VIOLATIONS

The Zoning Inspector should inspect all structures and uses for which a permit has been granted to assure full compliance. He should also investigate any complaints from citizens or governmental officials regarding alleged violations. When the Zoning Inspector discovers a violation, he should notify the owner, lessee, or person responsible for the violation of the nature of the violation in writing and order the necessary action to correct the violation (Appendix E).

ENFORCEMENT

Where a violation is anticipated or persists, appropriate action to prevent or correct such violation may be taken by:

1. Any public official authorized by the zoning ordinance or other ordinances, such as the municipal attorney, corporation counsel, zoning inspector, building inspector, or police chief.
2. Any adjacent or neighboring property owner who would be specifically damaged by such violation.

PENALTIES AND REMEDIES

Cities, villages, towns, and counties have been granted power in the case of violations to prescribe penalties which include punishment by fine. Unless such penalties are accompanied by a provision in the zoning ordinance for a court injunction to correct, abate, or prevent the violation, the objectives of the zoning ordinance are not achieved; and the payment of a fine may, as a practical matter, be little more than the payment of a special license fee to erect and continue a nonconforming use.

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Chapter X

BOARD OF ZONING APPEALS

It is not possible to prepare a zoning ordinance that is unequivocally clear, provides for all future eventualities, applies equally to all properties within a community, and is administered without error. Injustice may, therefore, occur to individual property owners from time to time if the zoning ordinance is enforced literally or incompetently without provision for appeal. There must be created an agency to whom a property owner may:

1. Appeal the alleged error of the Zoning Inspector or other enforcing official or board of officials;
2. Appeal for a variance from the strict requirements of the ordinance as it applies to a particular case;
3. Request an interpretation of the zoning regulations or district map;
4. Apply for a temporary or conditional use or special exception permit; or
5. Apply for a substitution of a nonconforming use.

Cities, villages, and towns which have enacted a zoning ordinance pursuant to Section 62.23(7) of the Wisconsin Statutes are required to create such an appeal agency. This agency is called a Board of Appeals in the Statutes but, to avoid confusion with other appeal bodies, should be designated as the "Board of Zoning Appeals." Although not required by the enabling act, counties and towns which have enacted zoning ordinances pursuant to Section 59.99 or 60.75 of the Wisconsin Statutes should also provide for such an appeal agency, which should be designated as the "Board of Adjustment." Sections 59.99 and 60.75 of the Wisconsin Statutes provide for the appointment of such a board of adjustment and for its membership, organization, powers, and procedures.

These boards function to provide necessary flexibility in the otherwise rigid requirements of the zoning ordinance, control special uses, and prevent unjust or illegal applications of the zoning ordinance. These boards do not take the place of the local legislative body or zoning planning agency in the preparation or amendment of the zoning ordinance, but are quasi-judicial bodies and, as such, may not amend or repeal the zoning ordinance.

MEMBERSHIP

The Board of Zoning Appeals consists of five members appointed by the Mayor, Village President, or Town Chairman, subject to confirmation by the Common

Council, Village Board, or Town Board respectively. They are appointed for three-year terms that are staggered so as to provide for continuity. Provisions should be made for the appointment of an alternate member who would vote when a regular member is absent or abstains.

The members of a Board of Zoning Appeals or Board of Adjustment should be persons of judicial temperament whose decisions will not be influenced by personal interest or political pressures. They should be individuals who have demonstrated interest in the orderly development of the community and have an understanding of the community's development problems.

It is suggested that the membership consist of at least one person who is a registered architect or civil engineer, one who has a background in real estate, and one who is also a citizen member of the local plan commission. It is desirable that none of the members hold an elective office or be currently active in real estate or insurance sales. Obviously, the Zoning or Building Inspector cannot be a member as it is the purpose of the board to provide a media for an appeal from his order or denial of permit.

It is recommended that the members familiarize themselves with their powers and duties which are thoroughly discussed in the League of Wisconsin Municipalities' pamphlet, Zoning Board of Appeals.¹² Copies of this excellent pamphlet may be obtained from the League, and the municipal attorney should be asked to advise the members of any statutory change or case law modifications subsequent to the preparation of this pamphlet.

ORGANIZATION

The Chairman of the Board of Zoning Appeals is designated by the Mayor, Village President, or Town Chairman; and a Vice-Chairman and Secretary should be selected by the other members. In small communities the City, Village, or Town Clerk may be designated as the Secretary. If the community has a full or part-time planner, it is desirable to have him attend all the board meetings for the purpose of providing technical and professional assistance upon request.

The state enabling act requires the board to adopt "Rules of Procedure" that are in accordance with the Wisconsin Statutes and the local ordinance. A model "Rules of Procedure" applicable to smaller communities is reproduced in Appendix B. The rules of procedure should be adopted at the first meeting of the board or as soon as possible if the board is already in existence. Once adopted they should be strictly adhered to. These rules should be designed to include every required item in the state enabling act and the local zoning ordinance and to provide for orderly hearing procedures, efficient processing, and to assure equal and uniform treatment of all citizens.

POWERS

The Board of Zoning Appeals has been granted the following powers:

1. To correct upon appeal or application any error made by the Zoning Inspector in his interpretation and enforcement of the zoning ordinance.
2. To authorize upon appeal a variance* to the terms of the zoning ordinance.
3. To interpret upon application the regulations of the zoning ordinance and the boundaries of the zoning map.
4. To grant upon application special exceptions** to the terms of the zoning ordinance as provided in that ordinance.

Additional powers to hear and decide appeals concerning airports, building codes, and fire district regulations have been granted to the board in certain instances. They also have been given power to permit erection of structures which have no access to or lie in a future street, highway, or parkway that has been placed on the Official Map.

The board has no legislative power and cannot authorize a use variance; that is, they cannot permit a use in a district which has been excluded by the zoning ordinance. This is a logical rule and was specifically enumerated in the case of State ex rel. Tingley v. Gurda.¹⁹ Any amendment to the zoning ordinance text and map are strictly the function of the local governing body.

APPEALS

Appeals from the decision of the Zoning Inspector and the literal enforcement of the zoning ordinance may be made by any person aggrieved or by any officer, department, board, or bureau of the community affected. Except for attacks on the legality of the ordinance, such appeal is exclusive of all other remedies and must be exhausted before the aggrieved party can resort to the Courts for other

* A variance may be defined as a departure from the provisions of the zoning ordinance, as applied to a specific building or parcel of land, permitted by the board of zoning appeals upon finding that a literal application of such provisions will affect a limitation on the use of the property which does not generally apply to other properties in the same zone and for which there is no compensating gain to the public health, safety or general welfare and which would, therefore, create an unnecessary hardship.

** Special exceptions are uses that would not be appropriate generally or without restriction throughout a zoning district but which, if controlled, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, and general welfare.

relief.¹¹ Adjacent real property owners, however, who might be specially damaged may institute a suit seeking injunctive relief against an alleged zoning violation without first taking the matter before the Board.⁶ Model forms showing refusal of a permit and appeal of that refusal are included in Appendices D and F.

An aggrieved person should be one directly affected, such as the owner, mortgagee, or lessee. A reasonable limit should be placed upon the time within which an appeal may be filed. Neighboring property owners have been held not to be "aggrieved persons" by the Wisconsin Supreme Court.¹⁷ A neighbor who is affected by the decision of the Zoning Inspector should ask the Board of Zoning Appeals to review the Zoning Inspector's decision on the board's own motion.

APPLICATIONS

Applications for (1) an interpretation of the zoning ordinance or the zoning map; (2) permission to erect a public utility; (3) a substitution of a nonconforming use; (4) a determination of unclassified uses; or (5) the issuance of a temporary conditional use permit, may be made by anyone at any time. A sample application is included in Appendix F. Standards for temporary and conditional uses should be specified in the zoning ordinance for the guidance of the board.

HEARING

The Board of Zoning Appeals must conduct a public hearing on each appeal or application received. The time and place of the hearing must be preceded by a notice to the public and the parties in interest. It is desirable that public notice be given by publication in an official newspaper or posting in three public places. A model notice is included in Appendix G. Written notice should be mailed to the Zoning Inspector, local planning or zoning agency, the appellant or applicant, and the neighboring property owners.

A public hearing is merely the right to appear before the board and present evidence and ask questions of the appellant or applicant and the public officials. The hearing should be conducted in an informal but orderly manner following the adopted rules of procedure (Appendix B). It is not necessary to hire a reporter or stenographer, but the secretary should keep minutes which carefully and accurately reflect the general nature of the testimony, the evidence introduced, the arguments made and the findings of the board. The chairman or the vice-chairman has the power to administer oaths and compel the attendance of witnesses.

DECISION

The board may consider and base its decision upon the following:

1. Arguments and facts presented by the appellant or applicant and the Zoning Inspector.

2. Recommendations of officials, such as health, fire, and police officers, planning or engineering staffs, or planning commission.
3. Facts known to the board and their view of the premises.

Testimony that merely recites conclusions with no substantive facts should be disregarded. Any discussion or attacks on the constitutionality of the zoning ordinance should not be entertained as the petitioner should be advised to take his action into a court. The board may permit any interested citizens to testify as to facts concerning the appeal or application.

The board is not bound by any previous grant or denial of an appeal or application, but they should attempt to be consistent in their decisions so as to avoid having their decisions attacked as being arbitrary or capricious. The board must be careful to base its decision upon facts and avoid being influenced by a majority view which may be expressed at the hearing or by a petition bearing many signatures. The decision must be made within a reasonable time after the hearing. The concurring vote of at least four members is necessary to:

1. Reverse any order, requirement, decision or determination of any zoning official,
2. Grant a variance,
3. Make an interpretation,
4. Permit a utility in any district,
5. Permit a substitution,
6. Determine an unclassified use, or
7. Grant a temporary or conditional use permit.

This decision must be in writing, and it must contain reasons for their actions. It must contain findings of fact, and the exact nature of the error or hardship supporting reversal or variance should be stated.

Criteria to guide the board's decision should be provided wherever possible in the text of the ordinance. In the case of variances, the state enabling act requires that:

1. The variance will not be contrary to the public interest,
2. A literal enforcement of the zoning ordinance would result in practical

difficulty or unnecessary hardship because of special conditions,

3. The spirit of the zoning ordinance is observed,
4. The public safety and welfare are secured, and
5. Substantial justice is done.

Improper variances are insidious for they emasculate the zoning ordinance while lulling the citizens into the false impression that they have a zoning ordinance which has, at the same time, become ineffective.

The following are a few principles that may guide the board:

1. The burden is upon the appellant to prove the need for a variance.
2. Pecuniary hardship, loss of profit, self-imposed hardships, such as that caused by ignorance, deed restrictions, proceeding without a permit, or illegal sales, are not sufficient reasons for granting a variance.
3. The board is bound to accept the zoning ordinance and map as correct.
4. The plight of the appellant must be unique, such as a shallow or steep parcel.
5. The hardship justifying a variance must apply to individual appellant's parcel or structure and not generally to other properties in the same district.
6. The variance must not be detrimental to adjacent properties.

The board may impose conditions upon the land granted the variance, and these conditions must not be unreasonable, arbitrary, unnecessary or oppressive. For example, a time limit may be placed upon a variance as a condition of its being granted. The appellant or applicant should be notified of the board's decision in writing, and any conditions should be specifically enumerated. (Appendix H).

The board may reasonably reconsider and rescind its previous action if vested rights are not violated. However, new evidence should be required and a time period provided for resubmission so as to avoid multiple requests from dissatisfied appellants and applicants.

It is imperative that any member who has any interest in an appeal or application disqualify himself, abstain from discussion, and refrain from voting. Nothing damages the public confidence in governmental officials or actions more than does a decision which appears to have been influenced by a member's personal interest.

COURT REVIEW

Any person aggrieved by the board's decision or any taxpayer or any officer, department, board or bureau of the community may present to a court of record a petition duly verified setting forth such decision as being illegal and specifying the grounds of the illegality. This petition must be presented within 30 days after the filing of the board's decision in the office of the board as provided in Section 62.23 (7)(e)¹⁰ of the Wisconsin Statutes.

The court may then allow a writ of certiorari if it appears that:

1. Some error has been committed.
2. The error has caused substantial harm.
3. The petitioner has not been guilty of delay in seeking his remedy.

This writ of certiorari is merely an order of a superior court to a lower court or a quasi-judicial agency to send specific records to the higher court for review. The court of record will then determine whether the board's action was arbitrary, unreasonable, or discriminatory. The writ of certiorari is not one of strict right and whether or not it shall be issued rests in the sound discretion of the court.

The board or its secretary responds to the writ by sending a certified or sworn copy of all the papers, exhibits, testimony, minutes or other records pertinent to the hearing and upon which the board based its decision. The return must be verified, and it must concisely set forth such other facts as may be pertinent and material to show the grounds for the decision appealed from.

The court may reverse, affirm, or modify the board's decision; but in reviewing the board's decision, the court may not substitute its judgment for that of the board. It will, however, pass upon the completeness and reasonableness of the board's action and the application and interpretation of the state and local zoning laws. There is a presumption that the board's decision is legal and reasonable, and the burden is upon the person who has petitioned for review to prove that the board has abused its discretion or failed to observe the state and local zoning laws.

The court does not inquire into the individual vote of the board's members, and they usually cannot be held liable for damages. However, if it is shown that the board acted maliciously, in bad faith, or with gross negligence, the cost of the appeal may be awarded against it.

Walter Blucher, noted American planner, estimates that "...50 percent of all the rulings of zoning boards of appeals in the United States are probably illegal

usurpations of power."⁴ Therefore, it behooves the local board to be careful and judicious in exercising their powers so as not to be embarrassed by an adverse court review.

Chapter XI

CHANGES AND AMENDMENTS

The zoning ordinance should not be regarded, when once adopted, as rigidly fixed for all time. Changes in living habits, site layout design, and the growth and development of the community may all require changes to the district boundaries and amendments to the regulations. Changes and amendments can only be made by the governing body, and these cannot be made by just a simple motion. The Legislature has set up procedures for a recommendation by the local planning or zoning agency, public hearings, adequate notice of hearings, and voting requirements in the event of a protest to the proposed change or amendment. These procedures must be scrupulously followed if the changes or amendments are to be valid. Other than the procedures required by statute, the governing body is free to act according to local custom. There are no limits as to the time of debate, the continuance of the hearing, or when the vote must be taken. The zoning ordinance should provide procedures for the amendment of the regulations and any change of its districts.

PETITION FOR CHANGES AND AMENDMENTS

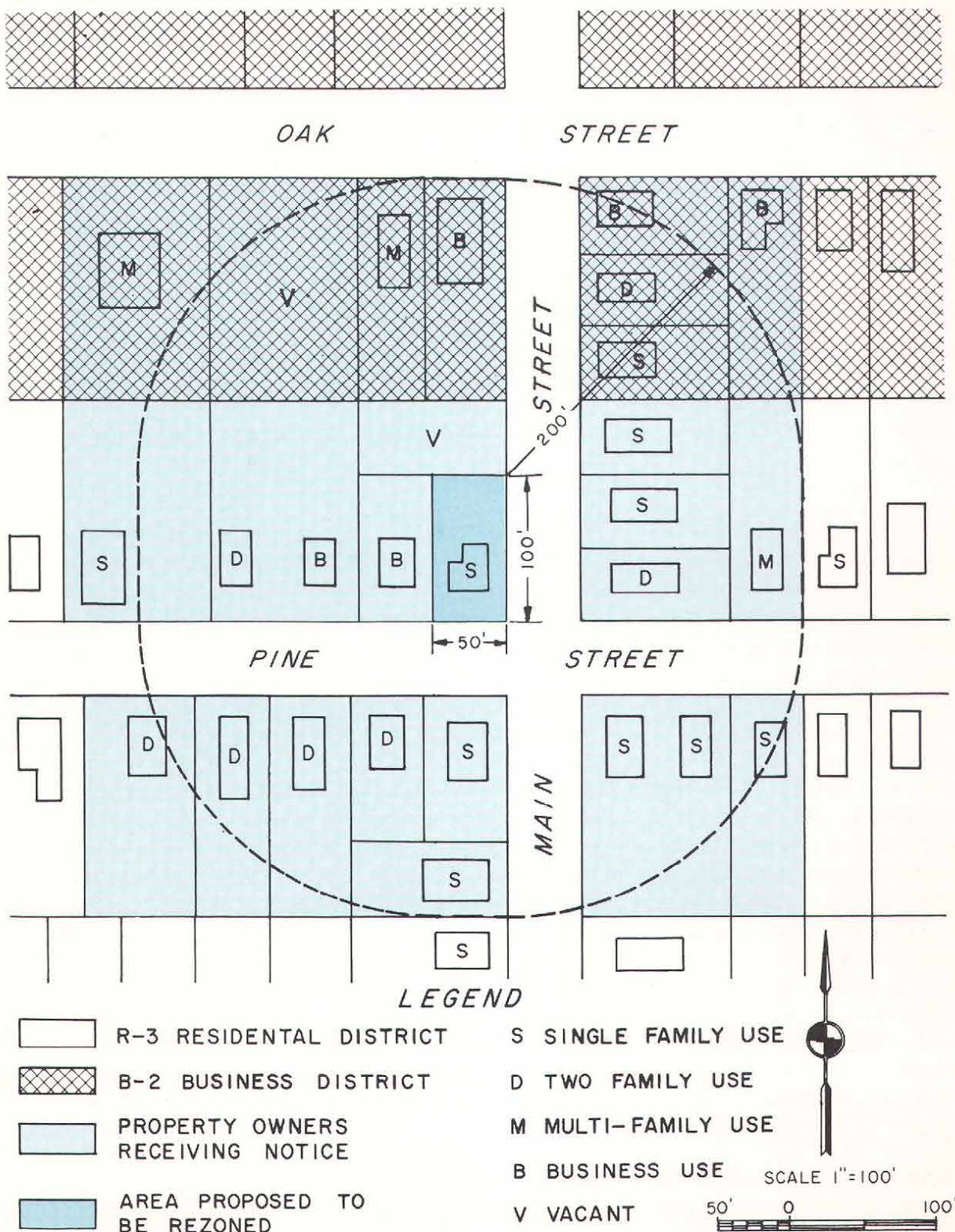
Anyone may petition the governing body to amend or to change their zoning ordinance. This includes the governing body itself and the local planning or zoning agency. Petitions to amend a county ordinance may be made by any property owner in the area to be affected, by the town board operating under the county ordinance, by county board of supervisors, or by the county zoning agency. The petition should be addressed to the governing body and should describe the parcel to be rezoned or the regulations to be amended and the reasons for such request enumerated. The petitioner should be required to justify his rezoning petition in detail. If he claims the community was wrong in its initial zoning determination, he should be asked to provide proof, as for example, an economic or market analysis. The rezoning petition should have attached to it the names and addresses of all property owners whose lands lie within 200 feet of the area proposed for rezoning and the plot plan at a scale of 100 feet to the inch showing the following: the area to be rezoned, its location and dimensions; the location and classification of adjacent zoning districts; the location and existing use of all properties within 200 feet of the area proposed for rezoning. Often it is more efficient to have the local planning or engineering staff prepare the map and the list of names and addresses, in which case the fee for the rezoning petition should be increased to cover the added cost to the community. A model rezoning petition is included in Appendix I and a sample plot plan in Figure 43.

REVIEW PROCEDURE

The rezoning petition should be filed with the clerk who then presents it to the governing body at their next meeting. The governing body is required to refer

Figure 43

SAMPLE REZONING PETITION MAP



such petition to the local zoning or planning agency for their review and recommendation (except towns operating under Section 60.74).

The review of a proposed amendment to the regulations or a proposed change to the districts by the local planning commission or county park commission is an important prerequisite to official action by the governing body. These bodies are composed of competent, disinterested persons whereas a review and recommendation by a zoning committee composed of elective officers would not be desirable. The zoning agency's recommendation should be in writing; and the reasons for granting, modifying, or denying the proposed change or amendment should be stated.

HEARING

After reviewing the zoning agency's recommendation, the governing body is required to schedule a public hearing and give notice thereof by posting or publication. In addition, counties are required to send a copy of this notice by registered mail to each town affected by the proposed change or amendment. Cities, villages, and towns which have adopted village planning powers must give at least ten days' prior written notice of change to the zoning map to the clerk of any municipality whose boundaries are within 1,000 feet of the lands to be affected by the proposed change (Appendix J).

The hearing is held by the governing body, and opportunity to be heard is given to any interested person. The hearing on changes and amendments to county zoning ordinances and town zoning ordinances adopted pursuant to Section 60.74 of the Wisconsin Statutes are held by the county or town zoning agency. The governing body or zoning agency presiding at the hearing should not give undue weight to the number or vigor of those who appear to protest the zoning change or amendment. However, it should consider their arguments if valid.

Some rezoning petitioners or protestants will argue that they purchased their property in reliance upon the zoning regulations and districts existing at that time. But zoning laws enacted under a state's police power are not vested rights and although owners "...may suffer annoyance they have no legally protectable rights merely because of their reliance on the zoning ordinance...rights granted by legislative action under the police power can be taken away when in the valid exercise of its districts the legislative body sees fit."⁷

However, this does not mean that a community may use its zoning ordinance arbitrarily so as to discriminate against a particular owner. For example, the zoning ordinance cannot be amended for the sole purpose of preventing an owner from carrying out his proposed development after he had made substantial expenditures in reliance upon it.¹⁴

PROTEST

The state enabling act provides that, in the event of a formal protest by neigh-

boring owners, a favorable vote of three-quarters of the governing body is required to effect the amendment or change, except amendments or changes to town zoning ordinances adopted pursuant to Section 60.74 of the Wisconsin Statutes. The latter require a three-quarter vote of the town park commission or zoning committee in the event of protest.

The criteria for a valid protest varies for each ordinance adopted under different Wisconsin enabling acts.

City, Village, and Town Zoning Ordinances Adopted Pursuant to Section 62.23(7)
A protest, to be valid, must be duly signed and acknowledged by any of the following:

1. Owners of 20 percent or more of the areas of land included in such proposed change.
2. Owners of 20 percent or more of the area of land immediately adjacent extending 100 feet therefrom.
3. Owners of 20 percent of the land directly opposite thereto extending 100 feet from the frontage of such opposite land. Figure 44 graphically illustrates these area requirements.

Town Zoning Ordinances Adopted Pursuant to Section 60.74

A protest to be valid must be presented, duly signed, and acknowledged by any of the following:

1. Owners of 20 percent or more of the frontage proposed to be altered.
2. Owners of at least 20 percent of the frontage immediately in the rear thereof.
3. Owners of at least 20 percent of the frontage directly opposite the frontage proposed to be altered. Figure 45 illustrates these frontage requirements.

County Zoning Ordinances Adopted Pursuant to Section 59.97


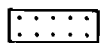

A protest to be valid must be filed with the county clerk at least 24 hours prior to the date of the meeting of the county board at which the report of the zoning agency is to be considered, duly signed and acknowledged by any of the following:

1. Owners of 20 percent or more of the area proposed to be altered.
2. Owners of at least 20 percent of the frontage immediately in the rear or along the side boundaries thereof within 300 feet of the area proposed to be changed.

Figure 44

REZONING PROTEST UNDER S. 62. 23(7)

LEGEND

-  AREA TO BE REZONED
-  AREA ADJACENT WITHIN 100'
-  AREA OPPOSITE WITHIN 100'

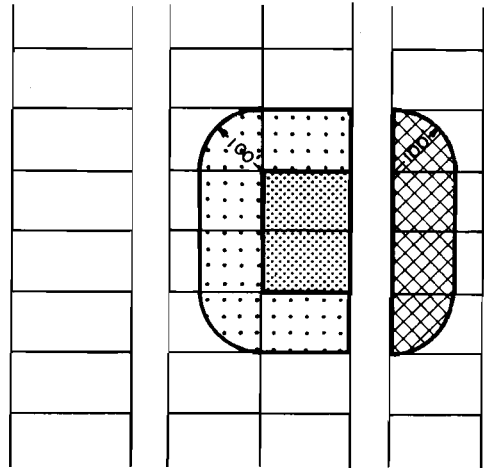

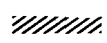
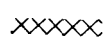


Figure 45

REZONING PROTEST UNDER S. 60. 74

LEGEND

-  AREA WITH THE FRONTAGE TO BE REZONED
-  FRONTAGE IMMEDIATELY TO REAR
-  FRONTAGE DIRECTLY OPPOSITE

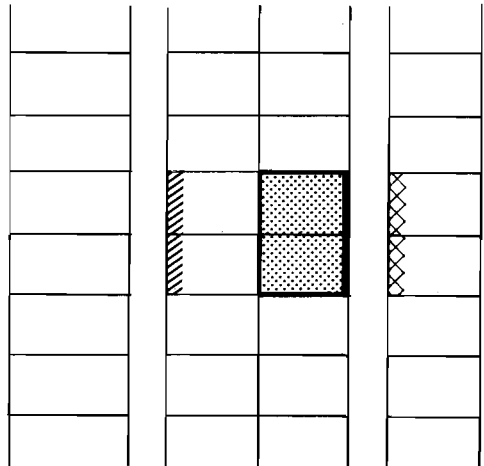

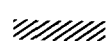
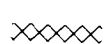

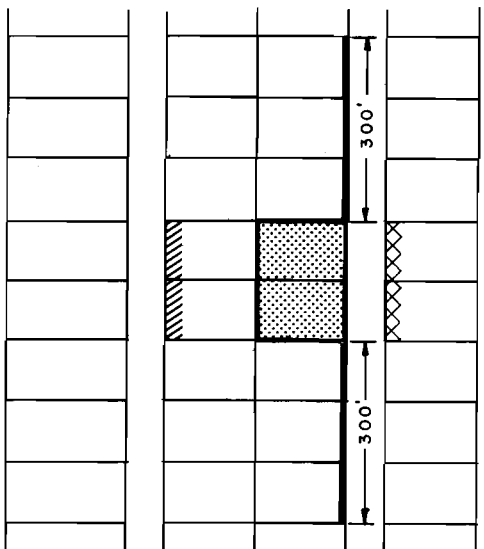


Figure 46

REZONING PROTEST UNDER S. 59. 97

LEGEND

-  AREA TO BE REZONED
-  FRONTAGE IMMEDIATELY TO REAR
-  FRONTAGE DIRECTLY OPPOSITE
-  FRONTAGE WITHIN 300' OF SIDES



3. Owners of at least 20 percent of the frontage directly opposite and across a public street, highway, or alley from the area proposed to be altered. Figure 46 illustrates these area and frontage requirements.

A three-quarter majority vote is difficult to obtain; for example, five members of a six-member village board would be required to overrule a valid protest.

A persistent rezoning petitioner will use various measures to change or avoid the protest or to have it declared invalid. Some methods used in the past include:

1. Payment of monies to the protestants in exchange for removal of their names from the protest under the guise of paying for damages that might occur to their property as a result of the zoning.
2. The placement of a strip between the area proposed to be rezoned and those entitled to protest so as to prevent their being eligible to protest.
3. Arguments that the protest has not been "duly signed and acknowledged."

One case in Illinois has held that it is probably sufficient to overcome the latter argument if one of the protest signers executes an affidavit that he knew personally all the signers, witnessed their signatures, knew that the signers owned property adjacent or across the street, that the signers were over 21 and had signed voluntarily.¹³

CRITERIA

There is no specific statutory criteria set up to guide the zoning agency in making their recommendations or the governing body in granting or denying the proposed changes or amendments. The same criteria used in creating the original districts and regulations would seem to be applicable to subsequent changes and amendments. Obviously, any changes to the zoning map could be made in conformance with the community's comprehensive plan; and changes and amendments made because of political pressures and friendships unrelated to this plan will destroy the very goal which the zoning ordinance was designed to accomplish. Some additional items that the zoning agency and the governing body should consider are:

1. Whether the zoning classification was correct initially.
2. Whether substantial changes have taken place in the neighborhood.
3. Whether expansion of an existing use is desirable.
4. Whether the existing municipal services, facilities, and utilities will be burdened.

5. Whether the rezoning will include uses that are more adverse than the proposed use.
6. Whether existing zoned areas are adequate to meet the community's needs.
7. The rate of development that the community can absorb.
8. The development's impact on vacant areas having similar zoning.

Often a planning agency makes an intensive review of a proposed change or amendment to the zoning ordinance and submits a recommendation in accordance with the results of this review and the duly adopted comprehensive plan only to have the governing body disregard such recommendations because of pressures. Such undesirable situations may be avoided by adding a requirement to the zoning ordinance that a three-quarter vote of the governing body be required to override the local planning agency's recommendation. This type of requirement has been held valid by the Wisconsin Supreme Court.²¹

ADOPTION OF REVISIONS

After the hearing the governing body is free to adopt or reject the proposed changes or amendments subject to the following:

1. A three-quarter (3/4) vote of the governing body is required, in the event of a valid protest, to adopt such changes and amendments except that only a three-quarter (3/4) vote of a town zoning agency is required, in the event of a valid protest, to adopt such changes or amendments to a town zoning ordinance adopted pursuant to Section 60.74 of the Wisconsin Statutes.
2. A favorable vote of a majority of the six members of the appropriate joint extraterritorial zoning committee is required before a village board or common council may adopt any changes or amendments affecting their extraterritorial zoning jurisdiction.
3. A three-quarter (3/4) vote of the governing body is required to overrule the planning agency's recommendation to grant or deny such changes or amendments if so provided in the local zoning ordinance.

Changes and amendments to the county zoning ordinance do not become effective in the towns under the county zoning ordinance until:

1. Duplicate copies are sent by registered mail to each clerk of those towns affected by such changes or amendments within seven days of its adoption by the county board, and
2. A majority of those towns affected by an amendment have filed certified copies of resolutions approving such amendment with the county clerk or

have not filed certified copies of resolutions disapproving such amendment with the county clerk within 40 days after the date of adoption by the county board.

3. The towns affected by a change to their district boundaries have filed a resolution of approval of such change with the county clerk or fail to file a certified copy of a resolution disapproving such change with the county clerk within 40 days after the date of adoption by the county board.

COMPREHENSIVE REVISION

Communities with older zoning ordinances are often plagued by frequent requests for amendments to district boundaries. Many of these may constitute "spot zoning" and provide little or no guidance for future development, only reflecting what the petitioner presently contemplates. Such day-to-day changes must be discouraged if the zoning ordinance is to be effective and respected; and if requests become excessive, consideration should be given to a comprehensive revision of the zoning ordinance.

Often it becomes necessary to make substantial changes and amendments to the district boundaries and regulations because of: new zoning techniques, annexation of land requiring new districts, development which has significantly changed the existing land use pattern, new needs and desires of the citizens, or the adoption of a comprehensive plan or a new land use plan.

If the anticipated changes consist merely of an addition of a district or the amendment of a regulation, the community is advised to follow the procedures for making amendments and changes prescribed in the enabling act. If the anticipated changes constitute a rather complete revision based upon a newly adopted comprehensive plan or newly adopted land use plan, it is probably desirable to repeal the existing ordinance entirely; but the procedure for making changes and amendments must be followed in adopting the new ordinance as no statutory authority exists for repealing an existing valid zoning ordinance and creating a new one.²⁰ Also, the repeal of the existing zoning ordinance must be carefully timed to occur simultaneously with the adoption of the new ordinance so as not to leave the community without any land use protection for what might become a substantial interval of time.

APPENDICES

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APPENDICES

In the following model ordinance, where the word *Village* appears in italics, the word City, Town, or County may be substituted; where the term *Plan Commission* appears in italics, the term Rural Planning Committee, Park Commission, Park and Planning Commission, or Zoning Committee may be substituted; and where the term *Village Board* appears in italics, the term Common Council, Town or County Board may be substituted; and where the term *Board of Zoning Appeals* appears in italics, the term Board of Adjustment may be substituted.

Zoning ordinances adopted by counties pursuant to Sections 59.97 and 59.99 and towns pursuant to Sections 60.74 and 60.75 of the Wisconsin Statutes require substantial changes to those sections of the model ordinance dealing with extraterritorial zoning power, administration, changes, amendments, and the board of zoning appeals.

Other words, terms, or paragraphs appearing in italics are provided as examples only and may be changed or omitted to best meet the needs and desires of individual communities. The flood districts and their mapping must be carefully reviewed by the local municipal attorney as to their particular application to a specific piece of property. Many of the yard and distance requirements, such as the triangular vision clearances, are minimum for urban conditions and must be substantially increased for rural conditions.

It is extremely important to note that the model ordinance and accompanying appendices are intended only as guides to be used by local units of government in the formulation of zoning ordinances, rules of procedure, notices, applications, appeals and petitions. Competent legal and planning assistance must be obtained in conjunction with the use of these guides by local communities.

Such legal and planning assistance should be utilized. A community can harm its development and risk expensive and embarrassing defeats in court if it retains competent professional planning and legal experts and then disregards their advice with respect to some major planning or legal principle.

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APPENDIX A

**MODEL
ZONING ORDINANCE**

Village of _____
_____ County, Wisconsin

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VILLAGE PLAN COMMISSION

Village of _____

_____, Wisconsin

_____, *Village President*

_____, *Village Trustee*

_____, *School Board Member*

_____, *Park Board Member*

_____, *Citizen Member*

_____, *Citizen Member*

_____, *Citizen Member*

Adopted _____

Published _____

Effective _____

Countersigned:

Village President

Village Clerk

Price _____

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INTRODUCTION

SECTION 1.0

1.1 Authority

These regulations are adopted under the authority granted by Sections 61.35 and 62.23(7) of the Wisconsin Statutes. Therefore, the *Village Board* of _____, Wisconsin, do ordain as follows:

1.2 Purpose

The purpose of this Ordinance is to promote the health, safety, morals, prosperity, aesthetics, and general welfare of this community.

1.3 Intent

It is the general intent of this Ordinance to regulate and restrict the use of all structures, lands, and waters; regulate and restrict lot coverage, population distribution and density, and the size and location of all structures so as to: lessen congestion in and promote the safety and efficiency of the streets and highways; secure safety from fire, flooding, panic, and other dangers; provide adequate light, air, sanitation, and drainage; prevent overcrowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; stabilize and protect property values; further the appropriate use of land and conservation of natural resources; preserve and promote the beauty of the community; and implement the community's comprehensive plan or plan components. It is further intended to provide for the administration and enforcement of this Ordinance and to provide penalties for its violation.

1.4 Abrogation and Greater Restrictions

It is not intended by this Ordinance to repeal, ab-

rogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to laws. However, wherever this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

1.5 Interpretation

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the *Village* and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

1.6 Severability

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

1.7 Repeal

All other ordinances or parts of ordinances of the *Village* inconsistent or conflicting with this Ordinance, to the extent of the inconsistency only, are hereby repealed.

1.8 Title

This Ordinance shall be known as, referred to, or cited as the "ZONING ORDINANCE, *VILLAGE* OF _____, WISCONSIN."

1.9 Effective Date

This Ordinance shall be effective after a public hearing, adoption by the *Village Board of Trustees*, and publication or posting as provided by law.

GENERAL PROVISIONS

SECTION 2.0

2.1 Jurisdiction

The jurisdiction of this Ordinance shall include all lands and waters within the corporate limits of the Village of _____. *The jurisdiction of this Ordinance shall also extend to those lands and waters lying within the unincorporated area within (1½, 3) miles of the corporate limits that are approved by a majority of the members of the appropriate Joint Extraterritorial Zoning Committee pursuant to Section 62.23 (7a) of the Wisconsin Statutes.*

2.2 Compliance

No structure, land, or water shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a zoning permit except minor structures and without full compliance with the provisions of this Ordinance and all other applicable local, county, and state regulations.

Architectural Board Approval shall be obtained as provided in Section 10.0.

The Duty of the Zoning Inspector, with the aid of the Police Department, shall be to investigate all complaints, give notice of violations, and to enforce the provisions of this Ordinance. The Zoning Inspector and his duly appointed deputies may enter at any reasonable time onto any public or private lands or waters to make a zoning inspection.

2.3 Zoning Permit

Applications for a zoning permit shall be made in duplicate to the Zoning Inspector on forms furnished by the Zoning Inspector and shall include the following where applicable:

Names and Addresses of the applicant, owner of the site, architect, professional engineer, or contractor.

Description of the Subject Site by lot, block, and recorded subdivision or by metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.

Plat of Survey prepared by a registered land surveyor showing the location, boundaries, dimensions, elevations, uses, and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets, and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; existing and proposed street, side, and rear yards. In addition, the plat of survey shall show the location, elevation, and use of any abutting lands and their structures within forty (40) feet of the subject site.

Proposed Sewage Disposal Plan if municipal sewerage service is not available. This plan shall be approved by the Village Engineer who shall certify in writing that satisfactory, adequate, and safe sewage disposal is possible on the site as proposed by the plan in accordance with applicable local, county, and state board of health regulations.

Proposed Water Supply Plan if municipal water service is not available. This plan shall be approved by the Village Engineer who shall certify in writing that an adequate and safe supply of water will be provided.

Additional Information as may be required by the Village Plan Commission, Village Engineer, Zoning, Building, Plumbing, or Health Inspectors.

Fee Receipt from the Village Treasurer in the amount of Twenty-five Dollars (\$25).

Zoning Permit shall be granted or denied in writing by the Zoning Inspector within thirty (30) days. The permit shall expire within six (6) months unless substantial work has commenced. Any permit issued in conflict with the provisions of this Ordinance shall be null and void.

2.4 Site Restrictions

No land shall be used or structure erected where the land is held unsuitable for such use or structure by the Village Plan Commission by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community. The Village Plan Commission, in applying the provisions of this section, shall in writing recite the particular facts upon which it bases its conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability if he so desires. Thereafter the Village Plan Commission may affirm, modify, or withdraw its determination of unsuitability.

All Lots shall abut upon a public street, and each lot shall have a minimum frontage of thirty (30) feet.

All Principal Structures shall be located on a lot; and only one principal structure shall be located, erected, or moved onto a lot.

No Zoning Permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width and located on that side thereof from which the required dedication has not been secured.

Private Sewer and Water. In any district where public sewerage service is not available, the width and area of all lots shall be sufficient to permit the use of an on-site sewage disposal system designed in accordance with Section H65 of the Wisconsin Administrative Code. In any district where a public water service or public sewerage service is not available, the lot width and area shall be determined in accordance with Section H65 of the Wisconsin Administrative Code, but for one-family dwellings shall be no less than one hundred (100) feet and no less than 20,000 square feet respectively.

Lots Abutting More Restrictive district boundaries shall provide side and rear yards not less than those required in the more restrictive abutting district. The street yards on the less restrictive district shall be modified for a distance of not more than sixty (60) feet from the district boundary

line so as to equal the average of the street yards required in both districts.

2.5 Use Restrictions.

The following use restrictions and regulations shall apply:

Principal Uses. Only those principal uses specified for a district, their essential services, and the following uses shall be permitted in that district.

Accessory Uses and structures are permitted in any district but not until their principal structure is present or under construction. Residential accessory uses shall not involve the conduct of any business, trade, or industry. Accessory uses include incidental repairs; storage; parking facilities; gardening; servant's, owner's, itinerant agricultural laborer's, and watchman's quarters not for rent; private swimming pools; and private emergency shelters.

Conditional Uses and their accessory uses are considered as special uses requiring review, public hearing, and approval by the *Village Plan Commission* in accordance with Section 4.0. Any development within *five hundred (500)* feet of the existing or proposed rights-of-way of freeways, expressways, interstate and controlled access trafficways and within *fifteen hundred (1500)* feet of their existing or proposed interchange or turning lane rights-of-way shall be deemed to be conditional uses. Such development shall be specifically reviewed and approved by the *Village Plan Commission* as provided in Section 4.0.

Unclassified or Unspecified Uses may be permitted by the *Board of Zoning Appeals* after the *Village Plan Commission* has made a review and recommendation provided that such uses are similar in character to the principal uses permitted in

the district.

Temporary Uses, such as real estate sales field offices or shelters for materials and equipment being used in the construction of a permanent structure, may be permitted by the *Board of Zoning Appeals*.

Performance Standards listed in Section 9.0 shall be complied with by all uses in all districts.

2.6 Reduction or Joint Use

No lot, yard, parking area, building area, or other space shall be reduced in area or dimension so as not to meet the provisions of this Ordinance. No part of any lot, yard, parking area, or other space required for a structure or use shall be used for any other structure or use.

2.7 Violations

It shall be unlawful to construct or use any structure, land, or water in violation of any of the provisions of this Ordinance. In case of any violation, the *Board of Trustees*, the *Zoning Inspector*, the *Village Plan Commission*, or any property owner who would be specifically damaged by such violation may institute appropriate action or proceeding to enjoin a violation of this Ordinance.

2.8 Penalties

Any person, firm, or corporation who fails to comply with the provisions of this Ordinance shall, upon conviction thereof, forfeit not less than *Ten Dollars (\$10)* nor more than *Two Hundred Dollars (\$200)* and costs of prosecution for each violation and in default of payment of such forfeiture and costs shall be imprisoned in the County Jail until payment thereof, but not exceeding *thirty (30)* days. Each day a violation exists or continues shall constitute a separate offense.

ZONING DISTRICTS

SECTION 3.0

3.1 Establishment

For the purpose of this Ordinance, the *Village of* _____ is hereby divided into the following fifteen zoning districts:

- R-1 *Single-Family Residential District*
- R-2 *Single-Family Residential District*
- R-3 *Multi-Family Residential District*
- B-1 *Neighborhood Business District*
- B-2 *Community Business District*
- B-3 *Integrated Business District*
- B-4 *Highway Business District*
- M-1 *Industrial District*
- M-2 *Heavy Industrial District*
- M-3 *Quarrying District*
- A-1 *Agricultural District*
- C-1 *Conservancy District*
- F-1 *Floodway District*
- F-2 *Flood Plain District*
- P-1 *Public and Semipublic District*

Boundaries of These Districts are hereby established as shown on a map entitled "Zoning Map, *Village of* _____, Wisconsin," dated _____, which accompanies and is a part of this Ordinance. Such boundaries shall be construed to follow: corporate limits; U. S. Public Land Survey lines; lot or property lines; centerlines of streets, highways, alleys, easements, and railroad rights-of-way or such lines extended; unless otherwise noted on the Zoning Map.

Vacation of public streets and alleys shall cause the land vacated to be automatically placed in the same district as the abutting side to which the vacated land reverts.

Annexations to or consolidations with the *Village* subsequent to the effective date of this Ordinance shall be placed in the *A-1, Agricultural District*, unless the annexation ordinance temporarily places the land in another district. Within one (1) year the *Village Plan Commission* shall evaluate and recommend a permanent district classification to the *Village Board*.

3.2 Zoning Map

A certified copy of the Zoning Map shall be adopted and approved with the text as part of this Ordinance and shall bear upon its face the attestation of the *Village President* and *Village Clerk* and shall be available to the public in the office of the *Village Clerk*.

Changes thereafter to the districts shall not be effective until entered and attested on this certified copy.

3.3 Residential Districts

R-1 Single-Family Residential District:

<u>Principal Use</u>	One-family dwellings
<u>Conditional Uses</u>	See Section 4.4.
<u>Lot</u>	Width Area
	Minimum 120 ft. Minimum 40,000 sq. ft.
<u>Building</u>	Area Height
	Minimum 2,000 sq. ft. Maximum 35 ft.

<u>Yards</u>	Street Rear Side	Minimum 50 ft. Minimum 50 ft. Minimum 20 ft.
--------------	------------------------	----------------------------------------------------

R-2 Single-Family Residential District

<u>Principal Use</u>	One-family dwellings
<u>Conditional Uses</u>	See Sections 4.4 and 4.5.
<u>Lot</u>	Width Area
	Minimum 70 ft. Minimum 10,000 sq. ft.
<u>Building</u>	Area Height
	Minimum 1,200 sq. ft. Maximum 35 ft.
<u>Yards</u>	Street Rear Side
	Minimum 25 ft. Minimum 40 ft. Minimum 10 ft.

R-3 Multi-Family Residential District

<u>Principal Uses</u>	Multi-family dwellings
<u>Conditional Uses</u>	See Sections 4.4 and 4.5.
<u>Lot</u>	Width Area
	Minimum 120 ft. Minimum 15,000 sq. ft. with no less than 2,000 sq. ft. per efficiency; 2,500 sq. ft. per one-bedroom unit; 3,000 sq. ft. per two-bedroom unit.
<u>Building</u>	Area Height
	Minimum 500 sq. ft. per family. Maximum 35 ft.
<u>Yards</u>	Street Rear Side
	Minimum 35 ft. Minimum 50 ft. Minimum 20 ft.

3.4 Business Districts

B-1 Neighborhood Business District

Principal Uses The following uses provided that they shall be retail establishments selling and storing only new merchandise: bakeries, barber shops, bars, beauty shops, business offices, clinics, clothing stores, clubs, cocktail lounges, confectioneries, delicatessens, drug stores, fish markets, florists, fraternities, fruit stores, gift stores, grocery stores, hardware stores, house occupations, hobby shops, lodges, meat markets, optical stores, packaged beverage stores, professional offices, restaurants, self-service and pickup laundry and dry cleaning establishments, soda fountains, sporting goods, supermarkets, tobacco stores, and vegetable stores. Existing residences shall comply with all the provisions of the *R-3 Residential District*.

<u>Conditional Uses</u>	See Sections 4.4, and 4.6.
<u>Building</u>	Height
	Maximum 35 ft.

<u>Yards</u>	<u>Street</u>	Minimum 25 ft.
	<u>Rear</u>	Minimum 50 ft.
	<u>Side</u>	None or if provided a minimum of 10 ft.

B-2 Community Business District

Principal Uses All uses permitted in the B-1 Neighborhood Business District and the following: apartment hotels, appliance stores, caterers, churches, clothing repair shops, crockery stores, department stores, electrical supply, financial institutions, food lockers, furniture stores, furniture upholstery shops, heating supply, hotels, laundry and dry-cleaning establishments employing not over seven persons, liquor stores, music stores, newspaper offices and press rooms, night clubs, office supplies, pawn shops, personal service establishments, pet shops, places of entertainment, photographic supplies, plumbing supplies, printing, private clubs, private schools, publishing, radio broadcasting studios, second-hand stores, signs, television broadcasting studios, trade and contractor's offices, upholsterer's shops, and variety stores. Existing residences shall comply with all the provisions of the R-3 Residential District.

Conditional Uses See Sections 4.4, 4.6, and 4.9.

Building Height Maximum 45 ft.

<u>Yards</u>	<u>Street</u>	Minimum 10 ft.
	<u>Rear</u>	Minimum 30 ft.
	<u>Side</u>	None or if provided a minimum of 10 ft.

B-3 Integrated Business District

Principal Uses None

Conditional Uses All B-2 Community Business District uses. See Sections 4.4, 4.6, and 4.9.

<u>Lot</u>	<u>Frontage</u>	Minimum 200 ft.
	<u>Area</u>	Minimum 2 acres.

Building Height Maximum 45 ft.

<u>Yards</u>	<u>Street</u>	Minimum 80 ft.
	<u>Rear</u>	Minimum 40 ft.
	<u>Side</u>	None or if provided a minimum of 10 ft.

B-4 Highway Business District

Principal Uses None

Conditional Uses Restaurants, gift stores, places of entertainment, confectioneries, and drug stores. See Sections 4.4, 4.6, and 4.9.

<u>Lot</u>	<u>Frontage</u>	Minimum 400 ft.
	<u>Area</u>	Minimum 4 acres.

Building Height Maximum 35 ft.

<u>Yards</u>	<u>Street</u>	Minimum 100 ft.
	<u>Rear</u>	Minimum 40 ft.
	<u>Side</u>	Minimum 40 ft.

3.5 Industrial Districts

M-1 Industrial District

Principal Uses Automotive body repairs; automotive upholstery; cleaning, pressing and dyeing establishments; commercial bakeries; commercial greenhouses; distributors; farm machinery; food locker plants; laboratories; machine shops; manufacture and bottling of nonalcoholic beverages; painting; printing; publishing; storage and sale of machinery and equipment; trade and contractors' offices; warehousing; and wholesaling. Manufacture, fabrication, packing, packaging, and assembly of products from furs, glass, leather, metals, paper, plaster, plastics, textiles, and wood. Manufacture, fabrication, processing, packaging, and packing of confections; cosmetics; electrical appliances; electronic devices; food except cabbage, fish and fish products, meat and meat products, and pea vining; instruments; jewelry; pharmaceuticals; tobacco; and toiletries. Existing residences shall comply with all the provisions of the R-3 Residential District.

Conditional Uses See Sections 4.4 and 4.7.

Building Height Maximum 45 ft.

<u>Yards</u>	<u>Street</u>	Minimum 25 ft.
	<u>Rear</u>	Minimum 30 ft.
	<u>Side</u>	Minimum 20 ft.

M-2 Heavy Industrial District

Principal Uses All M-1 Industrial District principal uses, freight yards, freight terminals and transshipment depots, inside storage, breweries, and crematories. Existing residences shall comply with all the provisions of the R-3 Residential District.

Conditional Uses See Sections 4.4 and 4.7.

Building Height Maximum 60 ft.

<u>Yards</u>	<u>Street</u>	Minimum 10 ft.
	<u>Rear</u>	Minimum 30 ft.
	<u>Side</u>	Minimum 10 ft.

M-3 Quarrying District

Principal Uses Mineral extraction operations and concrete and concrete products manufacturing that are presently in existence.

Conditional Uses Extension of legally existing mineral extraction operations and manufacture of concrete and concrete products or the creation of new such extraction or manufacturing operations; utilities. See Section 4.8.

Yards Minimum 200 ft. from any right-of-way or property line. Minimum 100 ft. for accessory uses such as offices, parking areas, and stock piles.

Structure Height Maximum 45 ft.

3.6 Agricultural District

A-1 Agricultural District

Principal Uses Apiculture, dairying, floriculture, forestry, general farming, grazing, greenhouses, hatcheries, horticulture, livestock raising, nurseries, orchards, paddocks, pasturage, poultry raising, stables, truck farming, and viticulture. Farm dwellings for those resident owners and laborers actually engaged in the principal permitted uses are accessory uses and shall comply with all the provisions of the *R-2 Residential District*.

Conditional Uses See Sections 4.4 and 4.7.

Farm Frontage Minimum 200 ft.
Area Minimum 10 acres.

Structure Height Maximum 50 ft.

Yards Street Minimum 80 ft.
Rear Minimum 50 ft.
Side Minimum 50 ft.

3.7 Conservancy District

C-1 Conservancy District

Principal Uses Fishing; hunting; preservation of scenic, historic, and scientific areas; public fish hatcheries; soil and water conservation; sustained yield forestry; stream bank and lake shore protection; water retention; and wildlife preserves.

Conditional Uses Drainage; water measurement and water control facilities; grazing; accessory structures, such as hunting or fishing lodges; orchards; truck farming; utilities; and wildcrop harvesting. The above uses shall not involve the dumping, filling, cultivation, mineral, soil or peat removal or any other use that would disturb the natural fauna, flora, watercourses, water regimen, or topography.

Structures None permitted except accessory to the principal or conditional uses.

3.8 Flood Districts

F-1 Floodway District

Principal Uses Drainage, movement of flood water, navigation, stream bank protection, water measurement and water control facilities.

Conditional Uses Grazing; horticulture; open parking and loading areas; open markets; open recreational uses such as parks, sport fields, beaches, bathing, hunting, fishing, camping, playgrounds, skating rinks, golf courses, and driving ranges; outdoor plant nurseries; pasturage; parks; sod farming; transient amusement uses such as circuses and carnivals; truck farming; utilities; viticulture; wildcrop harvesting; and wildlife preserves. The above uses shall not involve the dumping, filling, or any other use that would obstruct the floodway, retard drainage or retard the movement of flood waters.

Structures None permitted except navigation and water measurement and water control facilities.

F-2 Flood Plain District

Principal Uses Flood overflows, impoundments, parks, sustained yield forestry, fish hatcheries, wildlife preserves, water measurement and water control facilities.

Conditional Uses All uses permitted in the *A-1 Agricultural District* except residential uses; all uses permitted in the *P-1 Public and Semipublic District* except the caging of animals; warehousing, storage, parking and loading areas. The above uses shall not include the storage of materials that are buoyant, flammable, explosive, or injurious to human, animal, or plant life nor substantially reduce the flood water storage capacity of the flood plain. See Section 4.4.

Buildings All buildings shall have their first floors constructed at an elevation no less than two (2) feet above the level of the (25) (50) (100) year recurrence interval flood; (the greatest flood of record); (or the standard project flood).

3.9 Public and Semipublic District

P-1 Public and Semipublic District

Principal Uses Parks, arboretums, playgrounds, fishing, wading, swimming, beaches, skating, sledding, sustained yield forestry, wildlife preserves, soil and water conservation, water measurement and water control facilities.

Conditional Uses All structures; see Sections 4.4 and 4.9.

CONDITIONAL USES

SECTION 4.0

4.1 Permit

The *Village Plan Commission* may authorize the *Zoning Inspector* to issue a conditional use permit for conditional uses after review and a public hearing, provided that such conditional uses and structures are in accordance with the purpose and intent of this Ordinance and are found to be not hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the neighborhood or the community.

4.2 Application

Applications for conditional use permits shall be made in duplicate to the *Zoning Inspector* on forms furnished by the *Zoning Inspector* and shall include the following:

Names and Addresses of the applicant, owner of the site, architect, professional engineer, contractor, and all opposite and abutting property owners of record.

Description of the Subject Site by lot, block, and recorded subdivision or by metes and bounds; address of the subject site; type of structure; proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.

Plat of Survey prepared by a registered land surveyor showing all of the information required under Section 2.3 for a *Zoning Permit* and, in addition, the following: mean and historic high water lines, on or within *forty (40)* feet of the subject premises, and existing and proposed landscaping.

Additional Information as may be required by the *Village Plan Commission*, *Village Engineer*, *Zoning*, *Building*, *Plumbing*, or *Health Inspectors*.

Fee Receipt from the *Village Treasurer* in the amount of *Twenty-Five Dollars (\$25)*.

4.3 Review and Approval

The *Village Plan Commission* shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems, and the proposed operation.

Any Development within *five hundred (500)* feet of the existing or proposed rights-of-way of freeways, expressways, interstate and controlled access trafficways and within *fifteen hundred (1500)* feet of their existing or proposed interchange or turning lane rights-of-way shall be specifically reviewed by the highway agency that has jurisdiction over the trafficway. The *Village Plan Commission* shall request such review and await the Highway Agency's recommendations for a period not to exceed *sixty (60)* days before taking final action.

Conditions, such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, may be required by the *Village Plan Commission* upon its

finding that these are necessary to fulfill the purpose and intent of this Ordinance.

Compliance with all other provisions of this Ordinance, such as lot width and area, yards, height, parking, loading, traffic, highway access, and performance standards, shall be required of all conditional uses. Variances shall only be granted as provided in Section 11.0.

4.4 Public and Semipublic Uses

The following public and semipublic uses shall be conditional uses and may be permitted as specified:

Airports, airstrips, and landing fields in the *M-1* and *M-2 Industrial Districts*, *A-1 Agricultural District*, *F-2 Flood Plain District*, and *P-1 Public and Semipublic District*, provided the site area is not less than *twenty (20)* acres.

Governmental and Cultural Uses, such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds, and museums, in all *residential and business districts*; *M-1* and *M-2 Industrial Districts*, and *P-1 Public and Semipublic District*.

Utilities in all districts provided all principal structures and uses are not less than *fifty (50)* feet from any residential district lot line.

Public Passenger Transportation Terminals, such as heliports, bus and rail depots, except airports, airstrips, and landing fields, in all *Business Districts* and the *M-1* and *M-2 Industrial Districts* provided all principal structures and uses are not less than *one hundred (100)* feet from any residential district boundary.

Public, Parochial, and Private Elementary and secondary schools and churches in the *R-2* and *R-3 Residential Districts* and *P-1 Public and Semipublic District* provided the lot area is not less than *two (2)* acres and all principal structures and uses are not less than *fifty (50)* feet from any lot line.

Colleges; Universities; Hospitals; sanitariums; religious, charitable, penal and correctional institutions; cemeteries and crematories in the *A-1 Agricultural District* and *P-1 Public and Semipublic District* provided all principal structures and uses are not less than *fifty (50)* feet from any lot line.

4.5 Residential Uses

The following residential and quasi-residential uses shall be conditional uses and may be permitted as specified:

Planned Residential Developments, such as cluster developments in the *R-2 Residential District* and garden apartments, row housing and group housing in the *R-3 Residential District*. The district regulations may be varied provided that adequate open space shall be provided so that the average intensity and density of land use shall be no greater than that permitted for the district in which it is located. The proper preservation, care, and maintenance by the original and all subsequent owners of the exterior design; all common structures, facilities, utilities, access and open spaces shall be assured by deed restrictions enforceable by the *Village*. The following provisions shall be complied with:

<u>Development</u>		Minimum 10 acres.
<u>Lot</u>	Area	Minimum of 2/3 of the minimum lot area for the district in which located. Minimum 3,000 sq. ft. for row houses.
	Width	Minimum of 2/3 of the minimum lot width for the district in which located. Minimum 20 ft. for row houses.
<u>Building</u>	Area	Minimum building area for the district in which located.
	Height Rooms	Maximum 35 ft. All living rooms shall have windows opening onto a yard.
<u>Yards</u>	Street	Minimum 20 ft.
	Rear	Minimum 50 ft.
	Side	Minimum 20 ft. from street rights-of-way, exterior property lines of the development, and other buildings.

Clubs, fraternities, lodges, and meeting places of a noncommercial nature in the *R-3 Residential District* provided all principal structures and uses are not less than *twenty-five (25)* feet from any lot line.

Rest Homes, nursing homes, homes for the aged, clinics, and children's nurseries in the *R-2* or *R-3 Residential Districts* provided all principal structures and uses are not less than *fifty (50)* feet from any lot line.

Home Occupations and professional offices in the *R-2* or *R-3 Residential Districts*.

4.6 Highway Oriented Uses

The following commercial uses shall be conditional uses and may be permitted as specified:

Drive-In Theaters in the *B-4 Business District* provided that a planting screen at least *twenty-five (25)* feet wide is created along any side abutting a residential district and no access is permitted to or within *one thousand (1000)* feet of an arterial street.

Drive-In Establishments serving food or beverages for consumption outside the structure in the *B-4 Business District*.

Motels in the *B-4 Business District*.

Funeral Homes in the *B-2*, *B-3*, and *B-4 Business Districts* provided all principal structures and uses are not less than *twenty-five (25)* feet from any lot line.

Drive-In Banks in the *B-2*, *B-3*, and *B-4 Business Districts*.

Tourist Homes in the *B-2* and *B-4 Business Districts* provided such district is located on a state trunk or U. S. numbered highway.

Vehicle Sales, Service, washing and repair stations, garages, taxi stands, and public parking lots, in *all business districts* provided all gas pumps are not less than *thirty (30)* feet from any side or rear lot line and *twenty (20)* feet from any existing or proposed street line.

Any Development within *five hundred (500)* feet of the existing or proposed rights-of-way of freeways, expressways, interstate and controlled access trafficways, and within *fifteen hundred (1500)*

feet of their existing or proposed interchange or turning lane rights-of-way shall be deemed to be conditional uses; and no structures shall be erected closer than *one hundred (100)* feet to their rights-of-way.

4.7 Industrial and Agricultural Uses

The following industrial and agricultural uses shall be conditional uses and may be permitted as specified:

Animal Hospitals in the *A-1 Agricultural*, *M-1* and *M-2 Industrial Districts* provided the lot area is not less than *three (3)* acres, and all principal structures and uses are not less than *one hundred (100)* feet from any residential district.

Dumps, Disposal Areas, Incinerators, and sewage disposal plants in the *A-1 Agricultural* and the *M-1* and *M-2 Industrial Districts*. Municipal earth and sanitary land fill operations may be permitted in any district.

Commercial Raising, propagation, boarding, or butchering of animals, such as dogs, mink, rabbits, foxes, goats, and pigs; the commercial production of eggs; and the hatching, raising, fattening, or butchering of fowl in the *A-1 Agricultural District*. Pea vineries, creameries, and condenseries in the *A-1 Agricultural* or *M-1* and *M-2 Industrial Districts*.

Manufacture and Processing of abrasives, acet-ylene, acid, alkalies, ammonia, asbestos, asphalt, batteries, bedding, bleach, bone, cabbage, candle, carpeting, celluloid, cement, cereals, charcoal, chemicals, chlorine, coal tar, coffee, coke, cordage, creosote, dextrine, disinfectant, dye, excelsior, felt, fish, fuel, furs, gelatin, glucose, gypsum, hair products, ice, ink, insecticide, lampblack, lime, lime products, linoleum, matches, meat, oil cloth, paint, paper, peas, perfume, pickle, plaster of paris, plastics, poison, polish, potash, pulp, pyroxylin, radium, rope, rubber, sausage, shoddy, shoe and lampblack-ing, size, starch, stove polish, textiles, and varnish. Manufacturing, processing, and storage of building materials, explosives, dry ice, fat, fertilizer, flammables, gasoline, glue, grains, grease, lard, plastics, radioactive materials, shellac, soap, turpentine, vinegar, and yeast. Manufacture and bottling of alcoholic beverages. Bag cleaning, bleacheries, canneries, cold storage warehouses; electric and steam generating plants; electroplating; enameling; forges; foundries; garbage; incinerators; lacquering; lithographing; offal, rubbish, or animal reduction; oil, coal, and bone distillation; refineries; road test facilities; slaughterhouses; smelting; stockyards; tanneries; and weaving in the *M-2 Heavy Industrial District* and shall be at least *six hundred (600)* feet from residential and public and semipublic districts.

Outside Storage and Manufacturing Areas in the *M-2 Heavy Industrial District*. Wrecking, junk, demolition and scrap yards shall be surrounded by a solid fence or evergreen planting screen completely preventing a view from any other property or public right-of-way and shall be at least *six hundred (600)* feet from residential, public and semipublic districts.

Commercial Service Facilities, such as restaurants and fueling stations, in the *M-1* and *M-2 Industrial Districts* provided all such services are physically and sales-wise oriented toward industrial district users and employees and other users are only incidental customers.

4.8 Mineral Extraction

Mineral extraction operations including washing, crushing, or other processing are conditional uses and may be permitted in the *M-3 Quarrying District* provided:

The Application for the conditional use permit shall include: an adequate description of the operation; a list of equipment, machinery, and structures to be used; the source, quantity, and disposition of water to be used; a topographic map of the site showing existing contours with minimum vertical contour interval of *five (5)* feet, trees, proposed and existing access roads, the depth of all existing and proposed excavations; and a restoration plan.

The Restoration Plan provided by the applicant shall contain proposed contours after filling, depth of the restored topsoil, type of fill, planting or reforestation, restoration commencement and completion dates. The applicant shall furnish the necessary fees to provide for the *Village's* inspection and administrative costs and the necessary sureties which will enable the *Village* to perform the planned restoration of the site in event of default by the applicant. The amount of such sureties shall be based upon cost estimates prepared by the *Village Engineer*, and the form and type of such sureties shall be approved by the *Village Attorney*.

The Conditional Use Permit shall be in effect for a period not to exceed *two (2)* years and may

be renewed upon application for a period not to exceed *two (2)* years. Modifications or additional conditions may be imposed upon application for renewal.

The *Village Plan Commission* shall particularly consider the effect of the proposed operation upon existing streets, neighboring development, proposed land use, drainage, water supply, soil erosion, natural beauty, character, and land value of the locality and shall also consider the practicality of the proposed restoration of the site.

4.9 Recreational Uses

The following public recreational facilities shall be conditional uses and may be permitted as specified: archery ranges, bathhouses, beaches, boating, camps, conservatories, driving ranges, firearm ranges, golf courses, gymnasiums, hunting, ice boating, marinas, music halls, polo fields, pools, riding academies, skating rinks, sport fields, stadiums, swimming pools, and zoological and botanical gardens in the *P-1 Public and Semipublic District* provided that the lot area is not less than *three (3)* acres and all structures are not less than *fifty (50)* feet from any district boundary.

Commercial Recreation Facilities, such as arcades, bowling alleys, clubs, dance halls, driving ranges, gymnasiums, lodges, miniature golf, physical culture, pool and billiard halls, racetracks, rifle ranges, turkish baths, skating rinks, and theaters are conditional uses and may be permitted in the *B-2, B-3, or B-4 Business Districts*.

TRAFFIC, PARKING, AND ACCESS

SECTION 5.0

5.1 Traffic Visibility

No obstructions, such as structures, parking, or vegetation, shall be permitted in any district between the heights of *two* and *one-half* ($2\frac{1}{2}$) feet and *ten* (10) feet above the plane through the mean curb-grades within the triangular space formed by any two existing or proposed intersecting street or alley right-of-way lines and a line joining points on such lines located a minimum of *fifteen* (15) feet from their intersection.

In the Case of Arterial Streets intersecting with other arterial streets or railways, the corner cutoff distances establishing the triangular vision clearance space shall be increased to *fifty* (50) feet.

5.2 Loading Requirements

In all districts adequate loading areas shall be provided so that all vehicles loading, maneuvering, or unloading are completely off the public ways and so that all vehicles need not back onto any public way.

5.3 Parking Requirements

In all districts and in connection with every use, there shall be provided at the time any use or building is erected, enlarged, extended, or in-

creased off-street parking stalls for all vehicles in accordance with the following:

Adequate Access to a public street shall be provided for each parking space, and driveways shall be at least *ten* (10) feet wide for one- and two-family dwellings and a minimum of *twenty-four* (24) feet for all other uses.

Size of each parking space shall be not less than *one hundred and eighty* (180) square feet exclusive of the space required for ingress and egress.

Location to be on the same lot as the principal use or not over *four hundred* (400) feet from the principal use. No parking stall or driveway except in residential districts shall be closer than *twenty-five* (25) feet to a residential district lot line or a street line opposite a residential district.

Surfacing. All off-street parking areas shall be graded and surfaced so as to be dust free and properly drained. Any parking area for more than *five* (5) vehicles shall have the aisles and spaces clearly marked.

Curbs or Barriers shall be installed so as to prevent the parked vehicles from extending over any lot lines.

Number of Parking Stalls Required

Single-family dwellings and mobile homes	2 stalls for each dwelling unit
Multi-family dwellings	1.5 stalls for each dwelling unit
Hotels, motels	1 stall for each guest room plus 1 stall for each 3 employees
Hospitals, clubs, lodges, sororities, dormitories, lodging and boardinghouses	1 stall for each 2 beds plus 1 stall for each 3 employees
Sanitariums, institutions, rest and nursing homes	1 stall for each 5 beds plus 1 stall for each 3 employees
Medical and dental clinics	3 stalls for each doctor
Churches, theaters, auditoriums, community centers, vocational and night schools, and other places of public assembly	1 stall for each 5 seats
Colleges, secondary and elementary schools	1 stall for each 2 employees
Restaurants, bars, places of entertainment, repair shops, retail and service stores	1 stall for each 150 square feet of floor area
Manufacturing and processing plants, laboratories, and warehouses	1 stall for each 3 employees
Financial institutions; business, governmental, and professional offices	1 stall for each 300 square feet of floor area
Funeral homes	1 stall for each 4 seats
Bowling alleys	5 stalls for each alley

Uses Not Listed. In the case of structures or uses not mentioned, the provision for a use which is similar shall apply.

Combinations of any of the above uses shall provide the total of the number of stalls required for each individual use.

5.4 Driveways

All driveways installed, altered, changed, replaced, or extended after the effective date of this Ordinance shall meet the following requirements:

Islands between driveway openings shall be provided with a minimum of *twelve (12)* feet between all driveways and *six (6)* feet at all lot lines.

Openings for vehicular ingress and egress shall not exceed *twenty-four (24)* feet at the street line and *thirty (30)* feet at the roadway.

Vehicular Entrances and Exits to drive-in theaters, banks, and restaurants; motels; funeral homes; vehicular sales, service, washing and repair stations; garages; or public parking lots shall be not less than *two hundred (200)* feet from any pedestrian entrance or exit to a school, college, university, church, hospital, park, playground, library, public emergency shelter, or other place of public assembly.

5.5 Highway Access

No direct private access shall be permitted to the existing or proposed rights-of-way of: expressways; nor to any controlled access arterial street without permission of the highway agency that has access control jurisdiction.

No direct public or private access shall be permitted to the existing or proposed rights-of-way of the following:

Freeways, Interstate Highways, and their interchanges or turning lanes nor to intersecting or interchanging streets within *fifteen hundred (1500)* feet of the most remote end of the taper of the turning lanes.

Arterial Streets intersecting another arterial street within *one hundred (100)* feet of the intersection of the right-of-way lines.

Streets intersecting an arterial street within *fifty (50)* feet of the intersection of the right-of-way lines.

Access barriers, such as curbing, fencing, ditching, landscaping, or other topographic barriers, shall be erected to prevent unauthorized vehicular ingress or egress to the above specified streets or highways.

Temporary Access to the above rights-of-way may be granted by the *Village Plan Commission* after review and recommendation by the highway agencies having jurisdiction. Such access permit shall be temporary, revocable, and subject to any conditions required and shall be issued for a period not to exceed *twelve (12)* months.

MODIFICATIONS

SECTION 6.0

6.1 Height

The district height limitations stipulated elsewhere in this Ordinance may be exceeded, but such modification shall be in accord with the following:

Architectural Projections, such as spires, bell-fries, parapet walls, cupolas, domes, flues and chimneys, are exempt from the height limitations of this Ordinance.

Special Structures, such as elevator penthouses, gas tanks, grain elevators, scenery lofts, radio and television receiving antennas, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations, and smoke stacks, are exempt from the height limitations of this Ordinance.

Essential Services, utilities, water towers, electric power and communication transmission lines are exempt from the height limitations of this Ordinance.

Communication Structures, such as radio and television transmission and relay towers, aerials, and observation towers, shall not exceed in height *three (3)* times their distance from the nearest lot line.

Agricultural Structures, such as barns, silos, and windmills, shall not exceed in height *twice* their distance from the nearest lot line.

Public or Semipublic Facilities, such as schools, churches, hospitals, monuments, sanitariums, libraries, governmental offices and stations, may be erected to a height of *sixty (60)* feet, provided all required yards are increased not less than *one (1)* foot for each foot the structure exceeds the district's maximum height requirement.

6.2 Yards

The yard requirements stipulated elsewhere in this Ordinance may be modified as follows:

Uncovered Stairs, landings, and fire escapes may project into any yard but not to exceed *six (6)* feet and not closer than *three (3)* feet to any lot line.

Architectural Projections, such as chimneys, flues, sills, eaves, belt courses, and ornaments, may project into any required yard; but such projection shall not exceed *two (2)* feet.

Residential Fences are permitted on the property lines in residential districts but shall not in any case exceed a height of *six (6)* feet; shall not exceed a height of *four (4)* feet in the street yard and shall not be closer than *two (2)* feet to any public right-of-way.

Security Fences are permitted on the property lines in all districts except residential districts but shall not exceed *ten (10)* feet in height and shall be of an open type similar to woven wire or wrought iron fencing.

Accessory Uses and detached accessory structures are permitted in the rear yard only; they shall not be closer than *ten (10)* feet to the principal structure, shall not exceed *fifteen (15)* feet in height, shall not occupy more than *twenty (20)* percent of the rear yard area, and shall not be closer than *three (3)* feet to any lot line nor *five (5)* feet to an alley line.

Off-Street Parking is permitted in all yards of the *B-3* and *B-4 Business Districts* but shall not be closer than *twenty-five (25)* feet to any public right-of-way.

Essential Services, utilities, electric power and communication transmission lines are exempt from the yard and distance requirements of this Ordinance.

Landscaping and vegetation are exempt from the yard requirements of this Ordinance.

6.3 Additions

Additions in the street yard of existing structures shall not project beyond the *average* of the existing street yards on the abutting lots or parcels.

6.4 Average Street Yards

The required street yards may be decreased in any residential or business districts to the average of the existing street yards of the abutting structures on each side but in no case less than *fifteen (15)* feet in any residential district and *five (5)* feet in any business district.

6.5 Noise

Sirens, whistles, and bells which are maintained and utilized solely to serve a public purpose are exempt from the sound level standards of this Ordinance.

SIGNS

SECTION 7.0

7.1 Permit Required

No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a zoning permit except those signs excepted in Section 7.2 and without being in conformity with the provisions of this Ordinance. The sign shall also meet all the structural requirements of the Building Code.

7.2 Signs Excepted

All signs are prohibited in *all Residential, Agricultural, Conservancy, Flood, Public and Semipublic Districts* except the following:

Signs Over Show Windows or Doors of a nonconforming business establishment announcing without display or elaboration only the name and occupation of the proprietor and not to exceed *two (2)* feet in height and *ten (10)* feet in length.

Real Estate Signs not to exceed *eight (8)* square feet in area which advertise the sale, rental, or lease of the premises upon which said signs are temporarily located.

Name, Occupation, and Warning Signs not to exceed *two (2)* square feet located on the premises.

Bulletin Boards for public, charitable or religious institutions not to exceed *eight (8)* square feet in area located on the premises.

Memorial Signs, tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal and affixed flat against a structure.

Official Signs, such as traffic control, parking restrictions, information, and notices.

Temporary Signs or banners when authorized by the *Board of Zoning Appeals*.

7.3 Signs Permitted

Signs are permitted in *all Business and Industrial Districts* subject to the following restrictions:

Wall Signs placed against the exterior walls of buildings shall not extend more than *six (6)* inches outside of a building's wall surface, shall not exceed *five hundred (500)* square feet in area for any one premises, and shall not exceed *twenty (20)* feet in height above the mean centerline street grade.

Projecting Signs fastened to, suspended from, or supported by structures shall not exceed *one hundred (100)* square feet in area for any one premises; shall not extend more than *six (6)* feet into any required yard; shall not extend more than *three (3)* feet into any public right-of-way; shall not be less than *ten (10)* feet from all side lot lines; shall not exceed a height of *twenty (20)* feet above the mean centerline street grade; and shall not be less than *ten (10)* feet above the sidewalk nor *fifteen (15)* feet above a driveway or an alley.

Ground Signs shall not exceed *twenty (20)* feet in height above the mean centerline street

grade, shall meet all yard requirements for the district in which it is located, shall not exceed *one hundred (100)* square feet on one side nor *two hundred (200)* square feet on all sides for any one premises.

Roof Signs shall not exceed *ten (10)* feet in height above the roof, shall meet all the yard and height requirements for the district in which it is located, and shall not exceed *three hundred (300)* square feet on all sides for any one premises.

Window Signs shall be placed only on the inside of commercial buildings and shall not exceed *twenty-five (25)* percent of the glass area of the pane upon which the sign is displayed.

Combinations of any of the above signs shall meet all the requirements for the individual sign.

7.4 Facing

No sign except those permitted in Section 7.2 shall be permitted to face a *Residential or Public and Semipublic District* within *one hundred (100)* feet of such district boundary.

7.5 Traffic

Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals, or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices. No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, or fire escape; and no sign shall be attached to a standpipe or fire escape. No sign shall be placed so as to obstruct or interfere with traffic visibility.

7.6 Existing Signs

Signs lawfully existing at the time of the adoption or amendment of this Ordinance may be continued although the use, size, or location does not conform with the provisions of this Ordinance. However, it shall be deemed a nonconforming use or structure; and the provisions of Section 8.0 shall apply.

7.7 Bonds

Every applicant for a zoning permit for a sign shall, before the permit is granted, execute a surety bond in a sum to be fixed by the *Zoning Inspector*, but not to exceed *Twenty-Five Thousand Dollars (\$25,000)*; and it shall be of a form and type approved by the *Village Attorney*, indemnifying the *municipality* against all loss cost damages or expense incurred or sustained by or recovered against the *municipality* by reason of the erection, construction, or maintenance of such sign. A liability insurance policy issued by an insurance company authorized to do business in the State of Wisconsin, and conforming to the requirements of this section, may be permitted by the *Village Attorney* in lieu of a bond.

NONCONFORMING USES, STRUCTURES, AND LOTS

SECTION 8.0

8.1 Existing Nonconforming Uses

The lawful nonconforming use of a structure, land, or water existing at the time of the adoption or amendment of this Ordinance may be continued although the use does not conform with the provisions of this Ordinance; however:

Only That Portion of the land or water in actual use may be so continued and the structure may not be extended, enlarged, reconstructed, substituted, moved, or structurally altered except when required to do so by law or order or so as to comply with the provisions of this Ordinance.

Total Lifetime Structural Repairs or alterations shall not exceed fifty (50) percent of the *Village's* assessed value of the structure at the time of its becoming a nonconforming use unless it is permanently changed to conform to the use provisions of this Ordinance.

Substitution of New Equipment may be permitted by the *Board of Zoning Appeals* if such equipment will reduce the incompatibility of the nonconforming use with the neighboring uses.

8.2 Abolishment or Replacement

If such nonconforming use is discontinued or terminated for a period of twelve (12) months, any future use of the structure, land, or water shall conform to the provisions of this Ordinance. When a nonconforming use or structure is damaged by fire, explosion, flood, the public enemy, or other calamity, to the extent of more than fifty (50) percent of its current assessed value, it shall not be restored except so as to comply with the use provisions of this Ordinance.

A Current File of all nonconforming uses shall be maintained by the *Zoning Inspector* listing the following: owner's name and address; use of the structure, land, or water; and assessed value at the time of its becoming a nonconforming use.

8.3 Existing Nonconforming Structures

The lawful nonconforming structure existing at the time of the adoption or amendment of this Ordinance may be continued although its size or location does not conform with the lot width, lot

area, yard, height, parking and loading, and access provisions of this Ordinance; however, it shall not be extended, enlarged, reconstructed, moved, or structurally altered except when required to do so by law or order or so as to comply with the provisions of this Ordinance.

8.4 Changes and Substitutions

Once a nonconforming use or structure has been changed to conform, it shall not revert back to a nonconforming use or structure. Once the *Board of Zoning Appeals* has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use, the substituted use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the *Board of Zoning Appeals*.

8.5 Substandard Lots

In any residential district, a one-family detached dwelling and its accessory structures may be erected on any legal lot or parcel of record in the County Register of Deeds office before the effective date or amendment of this Ordinance.

Such Lot or Parcel shall be in separate ownership from abutting lands. If abutting lands and the substandard lot are owned by the same owner, the substandard lot shall not be sold or used without full compliance with the provisions of this Ordinance. If in separate ownership, all the district requirements shall be complied with insofar as practical but shall not be less than the following:

<u>Lot</u>	Width	Minimum 30 ft.
	Area	Minimum 4,000 sq. ft.
<u>Building</u>	Area	Minimum 1,000 sq. ft.
	Height	Maximum 30 ft.
<u>Yards</u>	Street	Minimum 25 ft.; the second street yard on corner lots shall be not less than 10 ft.
	Rear	Minimum 25 ft.
	Side	Minimum 16 percent of the frontage, but not less than 5 ft.

PERFORMANCE STANDARDS

SECTION 9.0

9.1 Compliance

This Ordinance permits specific uses in specific districts; and these performance standards are designed to limit, restrict, and prohibit the effects of those uses outside their premises or district. No structure, land, or water shall hereafter be used except in compliance with their district regulations and with the following performance standards.

9.2 Air Pollution

No activity shall emit any fly ash, dust, fumes, vapors, mists, or gases in such quantities as to cause soiling or danger to the health of persons, animals, vegetation, or other forms of property. No activity shall emit any liquid or solid particles in concentrations exceeding 0.3 grains per cubic foot of the conveying gas nor any color visible smoke equal to or darker than No. 2 on the Ringelmann Chart described in the United States Bureau of Mine's Information Circular 7718; except for not more than four (4) minutes during any six-hour period each stack or chimney, in an M-2 Heavy Industrial District, may emit smoke of Ringelmann No. 3. No activity shall emit more than ten (10) smoke units per hour per stack or chimney except that once during any six-hour period each stack or chimney, in an M-2 Heavy Industrial District, may emit up to twenty (20) smoke units when blowing soot or cleaning fires.

9.3 Fire and Explosive Hazards

All activities involving the manufacturing, utilization, processing, or storage of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and with adequate fire-fighting and fire-suppression equipment and devices that are standard in the industry. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in completely enclosed buildings which have incombustible exterior walls and an automatic fire extinguishing system. The above-ground storage capacity of materials that produce flammable or explosive vapors shall not exceed the following:

<u>Closed Cup Flash Point</u>	<u>Gallons</u>
Over 187° F.	400,000
105° F. to 187° F.	200,000
Below 105° F.	100,000

9.4 Glare and Heat

No activity shall emit glare or heat that is visible or measurable outside its premises except activities in the M-2 Heavy Industrial District which may emit direct or sky reflected glare which shall not be visible outside their district. All operations producing intense glare or heat shall be conducted within a completely enclosed building. Exposed sources of light shall be shielded so as not to be

visible outside their premises.

9.5 Liquid or Solid Wastes

No activity shall discharge at any point onto any land or into any water or public sewer any materials of such nature, quantity, noxiousness, toxicity, or temperature which can contaminate, pollute, or harm the quantity or quality of any water supply, can cause the emission of dangerous or offensive elements, can overload the existing municipal utilities, or can injure or damage persons or property.

9.6 Noise

No activity in an M-2 Heavy Industrial District shall produce a sound level outside the district boundary that exceeds the following sound level measured by a sound level meter and associated octave band filter:

<u>Octave Band Frequency (Cycles Per Second)</u>	<u>Sound Level (Decibels)</u>
0 to 75	79
75 to 150	74
150 to 300	66
300 to 600	59
600 to 1200	53
1200 to 2400	47
2400 to 4800	41
above 4800	39

No other activity in any other district shall produce a sound level outside its premises that exceeds the following:

<u>Octave Band Frequency (Cycles Per Second)</u>	<u>Sound Level (Decibels)</u>
0 to 75	72
75 to 150	67
150 to 300	59
300 to 600	52
600 to 1200	46
1200 to 2400	40
2400 to 4800	34
above 4800	32

All noise shall be so muffled or otherwise controlled as not to become objectionable due to intermittance, duration, beat frequency, impulse character, periodic character or shrillness.

9.7 Odors

No activity shall emit any odorous matter of such nature or quantity as to be offensive, obnoxious, or unhealthful outside their premises. The guide for determining odor measurement and control shall be Chapter 13, Air Pollution Abatement Manual 1960, prepared by the Manufacturing Chemists' Association, Inc., Washington, D. C.

9.8 Radioactivity and Electrical Disturbances

No activity shall emit radioactivity or electrical disturbances outside its premises that are dangerous or adversely affect the use of neighboring premises.

9.9 Vibration

No activity in any district except the *M-2 Heavy Industrial District* shall emit vibrations which are discernible without instruments outside its prem-

ises. No activity in an *M-2 Heavy Industrial District* shall emit vibrations which exceed the following displacement measured with a three-component measuring system:

Frequency (Cycles Per Second)	<u>Displacement (Inches)</u>	
	<u>Outside the Premises</u>	<u>Outside the District</u>
0 to 10	.0020	.0004
10 to 20	.0010	.0002
20 to 30	.0006	.0001
30 to 40	.0004	.0001
40 to 50	.0003	.0001
50 and over	.0002	.0001

ARCHITECTURAL BOARD

SECTION 10.0

10.1 Establishment

There is hereby established an Architectural Board for the *Village of* _____ for the purpose of promoting compatible development, aesthetics, stability of property values, and to prevent impairment or depreciation of existing developments.

10.2 Compliance

No structure shall hereafter be erected, moved, reconstructed, extended, enlarged, or have its exterior altered or changed without the Architectural Board's approval. Small accessory structures are exempt unless the *Zoning Inspector* requests a determination by the Architectural Board.

10.3 Membership

The Architectural Board shall consist of *six (6)* residents of the *Village* appointed by the *Village President* subject to confirmation by the *Village Board*. *At least one citizen plan commissioner, one real estate broker or appraiser, and one registered architect or registered professional engineer shall be appointed to such Architectural Board.*

Terms shall be staggered for *three-year* periods.

Chairman shall be appointed by the *Village President*

Secretary shall be selected by the members.

Official Oaths shall be taken by all members in accordance with Section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of their appointments.

Vacancies shall be filled for the unexpired term in the same manner as appointments for the full term.

10.4 Organization

The Architectural Board shall organize and adopt rules for its own government in accordance with the provisions of this Section.

Meetings shall be held at the call of the chairman or when requested by the *Zoning Inspector* and shall be open to the public.

Minutes shall be kept showing all actions taken and shall be a public record. The grounds for every decision shall be stated.

Quorum shall be *four (4)* members, and all actions shall require the concurring vote of at least *four (4)* members.

10.5 Powers

The Architectural Board shall have the following power:

Hear and Decide applications for permission

to erect, move, reconstruct, extend, alter, or change the exterior of all structures.

Approve, deny, or conditionally approve the application and may request such modifications as they may deem necessary to carry out the purpose of this Section.

Assistance. The Architectural Board may request assistance from other municipal officers, departments, boards, and commissions.

Request applicant to furnish additional information.

10.6 Applications

Applications for approval by the Architectural Board shall be made to the *Zoning Inspector* and shall be accompanied by the *Zoning Permit* application required under Section 2.3 and, in addition, shall be accompanied by plans showing the exterior elevations of the existing and proposed structure, description of the proposed materials, proposed floor grades, and a list of the names and addresses of the parties in interest.

10.7 Hearings

The Architectural Board shall schedule a reasonable time and place for the hearing and cause notice to be mailed to the applicant, *Zoning Inspector*, and the parties in interest at least *five (5)* days prior to the hearing. The applicant may appear in person, by agent, or by attorney.

10.8 Findings

The Architectural Board shall not approve any application unless they find beyond a reasonable doubt after viewing the site that the following facts and conditions exist and shall so indicate in the minutes of their proceedings:

The *Exterior Design* proposed is not unsightly or obnoxious and is not disharmonious or so similar to existing or proposed neighboring developments that substantial depreciation of neighboring property or development will be caused by the applicant's proposal.

The Architectural Board shall decide all applications within *five (5)* days after the final hearing and shall transmit a signed copy of their decision to the applicant and file a copy with the *Zoning Inspector*.

10.9 Appeals

Any person or persons aggrieved by any decisions of the Architectural Board may appeal the decision to the *Board of Zoning Appeals*. Such appeal shall be filed with the *Village Clerk* within thirty (30) days after filing of the decision with the *Zoning Inspector*.

BOARD OF ZONING APPEALS

SECTION 11.0

11.1 Establishment

There is hereby established a *Board of Zoning Appeals* for the *Village of _____* for the purpose of hearing appeals and applications, and granting variances and exceptions to the provisions of this Zoning Ordinance in harmony with the purpose and intent of the Zoning Ordinance.

11.2 Membership

The *Board of Zoning Appeals* shall consist of five (5) members appointed by the *Village President* and confirmed by the *Village Board*.

Terms shall be for staggered three-year periods.

Chairman shall be designated by the *Village President*.

An Alternate Member may be appointed by the *Village President* for a term of three (3) years and shall act only when a regular member is absent or refuses to vote because of interest.

One Member shall be a Village Plan Commissioner and one member shall be a registered architect, registered professional engineer, builder, or real estate appraiser.

Secretary shall be the *Village Clerk*.

Zoning Inspector shall attend all meetings for the purpose of providing technical assistance when requested by the Board.

Official Oaths shall be taken by all members in accordance with Section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of their appointment.

Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

11.3 Organization

The *Board of Zoning Appeals* shall organize and adopt rules of procedure for its own government in accordance with the provisions of this Ordinance.

Meetings shall be held at the call of the chairman and shall be open to the public.

Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's determination, and its finding of facts. These records shall be immediately filed in the office of the Board and shall be a public record.

The Concurring Vote of four (4) members of the Board shall be necessary to correct an error; grant a variance; make an interpretation; and permit a utility, temporary, unclassified, or substituted use.

11.4 Powers

The *Board of Zoning Appeals* shall have the following powers:

Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the *Zoning Inspector* or *Architectural Board*.

Variances. To hear and grant appeals for variances as will not be contrary to the public in-

terest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of this Ordinance shall be observed and the public safety, welfare, and justice secured. Use variances shall not be granted.

Interpretations. To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the *Village Plan Commission* has made a review and recommendation.

Substitutions. To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the *Village Plan Commission* has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.

Unclassified Uses. To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted in the district and the *Village Plan Commission* has made a review and recommendation.

Temporary Uses. To hear and grant applications for temporary uses, in any district provided that such uses are of a temporary nature, do not involve the erection of a substantial structure, and are compatible with the neighboring uses and the *Village Plan Commission* has made a review and recommendation. The permit shall be temporary, revocable, subject to any conditions required by the *Board of Zoning Appeals*, and shall be issued for a period not to exceed *twelve (12) months*. Compliance with all other provisions of this Ordinance shall be required.

Permits. The Board may reverse, affirm wholly or partly, modify the requirements appealed from, and may issue or direct the issue of a permit.

Assistance. The Board may request assistance from other *Village* officers, departments, commissions, and boards.

Oaths. The chairman may administer oaths and compel the attendance of witnesses.

11.5 Appeals and Applications

Appeals from the decision of the *Zoning Inspector* or the *Architectural Board* concerning the literal enforcement of this Ordinance may be made by any person aggrieved or by any officer, department, board, or bureau of the *Village*. Such appeals shall be filed with the secretary within *thirty (30) days* after the date of written notice of the decision or order of the *Zoning Inspector* or *Architectural Board*. Applications may be made by the owner or lessee of the structure, land, or water to be affected at any time and shall be filed with the secretary. Such appeals and application shall include the following:

Name and Address of the appellant or applicant and all abutting and opposite property owners of record.

Plat of Survey prepared by a registered land surveyor showing all of the information required under Section 2.3 for a *Zoning Permit*.

Additional Information required by the *Vil-*

lage Plan Commission, Village Engineer, Board of Zoning Appeals, or Zoning Inspector.

Fee Receipt from the Village Treasurer in the amount of Twenty-Five Dollars (\$25).

11.6 Hearings

The Board of Zoning Appeals shall fix a reasonable time and place for the hearing, give public notice thereof at least ten (10) days prior, and shall give due notice to the parties in interest, the Zoning Inspector, and the Village Plan Commission. At the hearing the appellant or applicant may appear in person, by agent, or by attorney.

11.7 Findings

No variance to the provisions of this Ordinance shall be granted by the Board unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of its proceedings.

Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.

Preservation of Property Rights. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed

by other properties in the same district and same vicinity.

Absence of Detriment. That the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.

11.8 Decision

The Board of Zoning Appeals shall decide all appeals and applications within thirty (30) days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Zoning Inspector, and Village Plan Commission.

Conditions may be placed upon any zoning permit ordered or authorized by this Board.

Variances, Substitutions, or Use Permits granted by the Board shall expire within six (6) months unless substantial work has commenced pursuant to such grant.

11.9 Review by Court of Record

Any person or persons aggrieved by any decision of the Board of Zoning Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board of Zoning Appeals.

CHANGES AND AMENDMENTS

SECTION 12.0

12.1 Authority

Whenever the public necessity, convenience, general welfare or good zoning practice require, the Village Board of Trustees may, by ordinance, change the district boundaries or amend, change or supplement the regulations established by this Ordinance or amendments thereto.

Such Change or Amendment shall be subject to the review and recommendation of the Village Plan Commission and the appropriate Joint Extraterritorial Zoning Committee.

12.2 Initiation

A change or amendment may be initiated by the Village Board, Village Plan Commission, or by a petition of one or more of the owners or lessees of property within the area proposed to be changed.

12.3 Petitions

Petitions for any change to the district boundaries or amendments to the regulations shall be filed with the Village Clerk, describe the premises to be rezoned or the regulations to be amended, list the reasons justifying the petition, specify the proposed use and have attached the following:

Plot Plan drawn to a scale of 1 inch equals 100 feet showing the area proposed to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts, and the location and existing use of all properties within two hundred (200) feet of the area proposed to be rezoned.

Owners' Names and Addresses of all properties lying within two hundred (200) feet of the area proposed to be rezoned.

Additional Information required by the Village Plan Commission, Joint Extraterritorial Zoning Committee, or Village Board.

Fee Receipt from the Village Treasurer in the amount of Twenty-Five Dollars (\$25).

12.4 Recommendations

The Village Plan Commission shall review all proposed changes and amendments within the corporate limits and shall recommend that the petition be granted as requested, modified, or denied. The recommendation shall be made at a meeting subsequent to the meeting at which the petition is first submitted and shall be made in writing to the Village Board.

The Appropriate Joint Extraterritorial Zoning Committee and the Village Plan Commission shall review all proposed changes and amendments within the extraterritorial zoning jurisdiction, but

only the members of the appropriate Joint Committee shall vote on matters relating to their zoning jurisdiction.

12.5 Hearings

The Village Board shall hold a public hearing upon each recommendation, giving at least ten (10) days' prior notice by publication at least three (3) times during the preceding thirty (30) days, listing the time, place, and the changes or amendments proposed. The Village Board shall also give at least ten (10) days' prior written notice to the clerk of any municipality within one thousand (1000) feet of any land to be affected by the proposed change or amendment.

Prior to the Village Board Hearing, the appropriate Joint Extraterritorial Zoning Committee shall hold a public hearing upon each proposed change or amendment within their zoning jurisdiction, giving at least ten (10) days' prior notice by publication at least three (3) times during the preceding thirty (30) days listing the time, place, and the changes or amendments proposed. The Joint Committee shall mail notice to the clerk of the affected town.

12.6 Village Board's Action

Following such hearing and after careful consideration of the Village Plan Commission's and appropriate Joint Extraterritorial Zoning Committee's recommendations, the Village Board shall vote on the passage of the proposed change or amendment.

The Village Plan Commission's Recommendations may only be overruled by three-fourths (3/4) of the full Village Board's membership.

A Favorable Vote of a majority of the six (6) members of the appropriate Joint Extraterritorial Zoning Committee is required before the Village Board may adopt any changes or amendments affecting their extraterritorial zoning jurisdiction.

12.7 Protest

In the event of a protest against such district change or amendment to the regulations of this Ordinance, duly signed and acknowledged by the owners of twenty (20) percent or more either of the areas of the land included in such proposed change, or by the owners of twenty (20) percent or more of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty (20) percent or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such changes or amendments shall not become effective except by the favorable vote of three-fourths (3/4) of the full Village Board membership.

DEFINITIONS

SECTION 13.0

For the purposes of this Ordinance, the following definitions shall be used. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not directory.

Accessory Use or Structure

A use or detached structure subordinate to the principal use of a structure, land, or water and located on the same lot or parcel serving a purpose customarily incidental to the principal use or the principal structure.

Alley

A special public right-of-way affording only secondary access to abutting properties.

Arterial Street

A public street or highway used or intended to be used primarily for fast or heavy through traffic. Arterial streets and highways shall include free-ways and expressways as well as arterial streets, highways, and parkways.

Basement

That portion of any structure located partly below the average adjoining lot grade.

Boardinghouse

A building other than a hotel or restaurant where meals or lodging are regularly furnished by pre-arrangement for compensation for *four (4)* or more persons not members of a family, but not exceeding *twelve (12)* persons and not open to transient customers.

Building

Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery or materials.

Building Area

The total living area bounded by the exterior walls of a building at the floor levels, but not including basement, utility rooms, garages, porches, breezeways, and unfinished attics.

Building Height

The vertical distance measured from the mean elevation of the finished lot grade along the street yard face of the structure to the highest point of flat roofs; to the mean height level between the eaves and ridges of gable, gambrel, hip, and pitch roofs; or to the deck line of mansard roofs.

Clothing Repair Shops

Shops where clothing is repaired, such as shoe repair shops, seamstress, tailor shops, shoe shine shops, clothes pressing shops, but none employing over *five (5)* persons.

Clothing Stores

Retail stores where clothing is sold, such as department stores, dry goods and shoe stores, dress, hosiery, and millinery shops.

Conditional Uses

Uses of a special nature as to make impractical their predetermination as a principal use in a district.

Corner Lot

A lot abutting two or more streets at their intersection provided that the corner of such intersection shall have an angle of *135* degrees or less, measured on the lot side.

Dwelling

A detached building designed or used exclusively as a residence or sleeping place, but does not include boarding or lodging houses, motels, hotels, tents, cabins, or mobile homes.

Efficiency

A dwelling unit consisting of one principal room with no separate sleeping rooms.

Emergency Shelter

Public or private enclosures designed to protect people from aerial, radiological, biological, or chemical warfare; fire, flood, windstorm, riots, and invasions.

Essential Services

Services provided by public and private utilities, necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface, or overhead gas, electrical, steam, water, sanitary sewerage, storm water drainage, and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations, and hydrants, but not including buildings.

Expressway

A divided arterial street or highway with full or partial control of access and with or without grade separated intersections.

Family

Any number of persons related by blood, adoption, or marriage, or not to exceed *four (4)* persons not so related, living together in one dwelling as a single housekeeping entity.

Freeway

An expressway with full control of access and with fully grade separated intersections.

Frontage

The smallest dimension of a lot abutting a public street measured along the street line.

Gift Stores

Retail stores where items such as art, antiques, jewelry, books, and notions are sold.

Hardware Stores

Retail stores where items such as plumbing, heating, and electrical supplies, sporting goods, and paints are sold.

Household Occupation

Any occupation for gain or support conducted entirely within buildings by resident occupants which is customarily incidental to the principal use of the premises, does not exceed twenty-five (25) percent of the area of any floor, uses only household equipment, and no stock in trade is kept or sold except that made on the premises. A household occupation includes uses such as baby sitting, millinery, dressmaking, canning, laundering, and crafts, but does not include the display of any goods nor such occupations as barbering, beauty shops, dance schools, real estate brokerage, or photographic studios.

Interchange

A grade separated intersection with one or more turning lanes for travel between intersection legs.
Joint Extraterritorial Zoning Committee
Any zoning committee established in accordance with Section 62.23(7a) of the Wisconsin Statutes (Chapter 241, Laws of 1963).

Living Rooms

All rooms within a dwelling except closets, foyers, storage areas, utility rooms, and bathrooms.

Loading Area

A completely off-street space or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public street or alley.

Lot

A parcel of land having frontage on a public street, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, yard, parking area, and other open space provisions of this Ordinance.

Lot Lines and Area

The peripheral boundaries of a parcel of land and the total area lying within such boundaries.

Lot Width

The width of a parcel of land measured at the rear of the specified street yard.

Machine Shops

Shops where lathes, presses, grinders, shapers, and other wood and metal working machines are used, such as blacksmith, tinsmith, welding, and sheet metal shops; plumbing, heating and electrical repair and overhaul shops.

Minor Structures

Any small, movable accessory erection or construction such as birdhouses; tool houses; pet-houses; play equipment; arbors; and walls and fences under *four (4)* feet in height.

Motel

A series of attached, semiattached, or detached sleeping units for the accommodation of transient guests.

Nonconforming Uses or Structures

Any structure, land, or water lawfully used, occupied, or erected at the time of the effective date of this Ordinance or amendments thereto which does not conform to the regulations of this Ordinance or amendments thereto. Any such structure conforming in respect to use but not in respect to frontage, width, height, area, yard, parking, loading, or distance requirements shall be considered a nonconforming structure and not a nonconforming use.

Parking Lot

A structure or premises containing *ten (10)* or more parking spaces open to the public for rent or a fee.

Parking Space

A graded and surfaced area of not less than *one hundred and eighty (180)* square feet in area either enclosed or open for the parking of a motor vehicle, having adequate ingress and egress to a public street or alley.

Parties in Interest

Includes all abutting property owners, all property owners within *one hundred (100)* feet, and all property owners of opposite frontages.

Professional Home Offices

Residences of doctors of medicine, practitioners, dentists, clergymen, architects, landscape architects, professional engineers, registered land surveyors, lawyers, artists, teachers, authors, musicians, or other recognized professions used to conduct their professions where the office does not exceed *one-half (1/2)* the area of only one floor of the residence and only one nonresident person is employed.

Rear Yard

A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the rear lot line and a line parallel thereto through the nearest point of the principal structure. This yard shall be opposite the street yard or one of the street yards on a corner lot.

Side Yard

A yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the side lot line and a line parallel thereto through the nearest point of the principal street.

Signs

Any words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trade marks by which anything is made known and which are used to advertise or promote an individual, firm, association, corporation, profession, business, commodity or product and which is visible from any public street or highway.

Smoke Unit

The number obtained when the smoke density in Ringelmann number is multiplied by the time of emission in minutes.

Street Yard

A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have two such yards.

Street

A public right-of-way not less than *fifty (50)* feet wide providing primary access to abutting properties.

Structure

Any erection or construction, such as buildings, towers, masts, poles, booms, signs, decorations, carports, machinery, and equipment.

Structural Alterations

Any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams, or girders.

Turning Lanes

An existing or proposed connecting roadway between two arterial streets or between an arterial street and any other street. Turning lanes include grade separated interchange ramps.

Utilities

Public and private facilities such as water wells, water and sewage pumping stations, water storage

tanks, power and communication transmission lines, electrical power substations, static transformer stations, telephone and telegraph exchanges, microwave radio relays, and gas regulation stations, but not including sewage disposal plants, municipal incinerators, warehouses, shops, and storage yards.

Yard

An open space on the same lot with a structure, unoccupied and unobstructed from the ground upward except for vegetation. The street and rear yards extend the full width of the lot.

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Appendix B

MODEL RULES OF PROCEDURE FOR A BOARD OF ZONING APPEALS

SECTION 1.1 Establishment

The Board of Zoning Appeals of the Village of _____ shall be governed by Section 62.23 of the Wisconsin Statutes and Section 11.0 of the Zoning Ordinance of the Village of _____ as amended and by the rules of procedure herein adopted. Whenever any conflict exists between these rules and the laws of the State or ordinances of the Village, the state laws and local ordinances shall prevail.

1.2 Membership

The Board shall consist of five (5) members appointed by the Village President, and confirmed by the Village Board, for staggered terms of three (3) years.

Chairman shall be designated by the Village President and shall preside at all meetings of the Board; supervise the work of the Secretary; and decide all points of procedure unless otherwise directed by a majority vote of the Board.

Vice-Chairman shall be selected by a majority vote of the Board.

An Alternate Member shall be appointed by the Village President for a term of three (3) years and shall act only when a regular member is absent or refuses to vote because of interest.

One Member shall be a Village Plan Commissioner; and one member shall be a registered architect, registered professional engineer, builder or real estate appraiser.

Secretary shall be the Village Clerk; and he shall prepare all correspondence for the Board; receive and file all appeals, applications, papers and records; prepare, publish and mail all notices required; prepare and keep all minutes and records of the Board's proceedings.

Zoning Inspector shall attend all meetings for the purpose of providing technical assistance when requested by the Board.

Official Oaths shall be taken by all members in accordance with Section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of their appointment.

Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

1.3 Meetings

All meetings shall be held at the call of the Chairman in the Village Hall, _____, Wisconsin, and shall be open to the public. However, the Board may go into closed executive session to discuss any appeal and arrive at its decision. The regular meeting in January shall be the annual meeting of the Board.

Quorum for any meeting shall consist of four (4) members, but a lesser number may meet and adjourn to a specified time.

Order of Business at meetings shall be substantially as follows:

Roll call and declaration of a quorum
Reading and approval of previous minutes
Communications
Unfinished business
Hearing of continuances
Hearing of new appeals and applications.
New business
Miscellaneous
Adjournment

Minutes of the proceedings and a record of all actions shall be kept by the Secretary, showing the vote of each member upon each question, the reasons for the Board's determination and its findings of facts. These records shall be immediately filed in the office of the Board and shall be a public record.

1.4 Appeals and Applications

Appeals from the decision of the Zoning Inspector or Architectural Board concerning the literal enforcement of this Ordinance may be made by any person aggrieved or by any officer, department, board, or bureau of the Village. Applications may be made by the owner or lessee of the structure, land, or water to be affected. The Board upon its own motion supported by the affirmative vote of at least four (4) members may review any action of the Zoning Inspector.

Time. Such appeals shall be filed with the Secretary within thirty (30) days after the date of written notice of the decision or order of the Zoning Inspector or Architectural Board. Applications for conditional, temporary, utility, unclassified, and substituted uses may be made any time in accordance with the Zoning Ordinance.

Form. Every appeal or application shall be made in duplicate to the Secretary on forms furnished by the Zoning Inspector. The applicant or appellant shall provide all information required on the form and any additional information requested in writing by the Village Plan Commission, Village Engineer, Board of Zoning Appeals, or Zoning Inspector. Failure to supply such information shall be grounds for dismissal of the appeal or application. The Zoning Inspector shall transmit to the Secretary all papers constituting the record upon which the appeal is being taken.

Fee for each appeal or application shall be Twenty-Five Dollars (\$25) payable to the Village Treasurer, with the receipt attached to the appeal or application.

A Review and Recommendation from the Village Plan Commission for each application shall be requested by the Board of Zoning Appeals.

Resubmission. No appeal or application which has been dismissed or denied shall be considered again within one (1) year of the Board's decision except by the affirmative vote of four (4) or more members and upon a finding that substantial new evidence is submitted which could not reasonably have been presented at the previous hearing.

1.5 Hearings

Notice of the time, date, and place of the hearing of an appeal or application shall be published in the official newspaper not less than ten (10) days prior thereto and mailed to the Board members, Zoning Inspector, appellant or applicants, and parties in interest. Notice of an application for construction of a building in the bed of a future street, highway, or parkway shall be published in the official newspaper not less than fifteen (15) days prior to the hearing.

Appearances. The appellant or applicant may appear in person or by his agent or attorney. In the absence of an appearance for or against an application or appeal, the Board may deny, dismiss, table, or grant the matter on the records before it.

Oaths and Witnesses. The Chairman may require witnesses to be sworn before testifying and may compel the attendance of witnesses by subpoena.

Order of Business at hearings shall be substantially as follows:

- Statement of the case by the Secretary
- Explanation by the Zoning Inspector
- Appellant's or applicant's side of the case
- Testimony of interested property owners
- Appellant's or applicant's rebuttal
- Rebuttal by the opposition

Adjournment. When all appeals cannot be disposed of on the day set, the Board may adjourn; and such adjourned day shall be construed as a continuance of the hearing.

Withdrawal. An appellant or applicant may withdraw his appeal or application at any time prior to decision thereon; but if a motion is pending to grant, deny, or dismiss the appeal, such motion shall have precedence. Withdrawal shall not entitle the appellant or applicant to return of the filing fee.

1.6 Variances

No variance to the provisions of this Ordinance shall be granted by the Board unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of the proceedings.

Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.

Preservation of Property Rights. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

Absence of Detriment. That the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.

1.7 Decision

The Board shall render its decision within thirty (30) days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Zoning Inspector, and Village Plan Commission.

Voting. The concurring vote of four (4) members of the Board shall be necessary to correct an error; grant a variance; make an interpretation; and permit a utility, temporary, unclassified, or substituted use. Whenever only four (4) members of the Board are present and the vote stands 3 to 1 in favor of the appellant or applicant, the matter shall be laid over for consideration and final determination at the next meeting. Failure to obtain a vote of four (4) upon a second presentation shall be deemed a refusal.

Record. The Secretary shall record the vote of each member upon each question in the minutes, or if the member is absent or fails to vote, shall indicate such fact in the minutes.

Personal Interest. No Board member shall participate in the decision of, or vote upon, any case in which he shall be interested, directly or indirectly; and the Chairman shall direct the alternate member to act in his stead.

Form. The final disposition of an appeal or application shall be in the form of a written resolution signed by the Chairman and Secretary and attached to the minutes. Such resolution shall show the reasons for the Board's determination and its findings of fact; shall either affirm, reverse, vary, or modify the order, requirement, decision, or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction and shall grant or deny an application.

Conditions imposed with respect to any permit shall be stated in the resolution embodying the Board's decision and shall also be set forth in the zoning permit. Such permit shall be valid only as long as the conditions upon which it is granted are observed.

Variances, Substitutions, or Use Permits granted by the Board shall expire within six (6) months unless substantial work has commenced pursuant to such grant.

1.8 Amendments

These Rules of Procedure may be amended or revoked by a majority vote of the Board at any meeting, provided all the members are notified. Suspension of the rules may be ordered at any meeting by a vote of not less than four (4) members.

Chairman

Secretary

Date Adopted

Appendix C

MODEL APPLICATION FOR A ZONING PERMIT

Instructions

Applications are to be filed with the Village Zoning Inspector, and he shall refuse applications that are not complete or that are not legible.

Names and Addresses

Applicant _____

Owner of the site _____

Architect _____

Professional Engineer _____

Contractor _____

Description of the Subject Site

Address of premises affected _____

Lot _____ Block _____ Subdivision _____

Metes and Bounds description _____

Zoning district classification _____

Description of existing operation or use _____

Description of the proposed operation or use _____

Number of employees _____

Type of structure _____

Attachments

The following required items shall be attached to this application:

Plat of Survey prepared by a registered land surveyor showing the location, boundaries, dimensions, elevations, uses, and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets, and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; existing and proposed street, side, and rear yards. In addition, the plat of survey shall show the location, elevation, and use of any abutting lands and their structures within forty (40) feet of the subject site.

Proposed Sewage Disposal Plan if municipal sewerage service is not available. This plan shall be approved by the Village Engineer who shall certify in writing that satisfactory, adequate, and safe sewage disposal is possible on the site as proposed by the plan in accordance with applicable local, county, and state board of health regulations.

Proposed Water Supply Plan if municipal water service is not available. This plan shall be approved by the Village Engineer who shall certify in writing that an adequate and safe supply of water will be provided.

Additional Information as may be required by the Village Plan Commission, Village Engineer, Zoning, Building, Plumbing, or Health Inspectors.

Fee Receipt from the Village Treasurer in the amount of Twenty-Five Dollars (\$25).

Certificate

I hereby certify that all the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief.

Applicant _____

Address _____

Date _____

Approval or Refusal

Date Permit (Issued, Denied) _____

Zoning Inspector _____

Notes:

Permit May Be Revoked without notice if misrepresentation of any of the above information or attachments is found to exist.

Permit Shall Expire within six (6) months unless substantial work has commenced.

Permit Is Null and Void if issued in error. It is understood that any permit issued on this application will not grant any right or privilege to erect any structure or to use any premises for any purpose that is prohibited by the Village Zoning Ordinance or any other state or local laws.

Changes in the plans or specifications submitted in the original application shall not be made without prior written approval of the Zoning Inspector.

Appendix D

MODEL NOTICE OF A PERMIT REFUSAL

OFFICE OF THE ZONING INSPECTOR
VILLAGE OF _____, WISCONSIN

Date _____

Mr. John Doe
960 Oak Street
_____, Wisconsin

Dear Mr. Doe:

Your application for a permit to (use, locate, correct, move, reconstruct, extend, enlarge, convert, or structurally alter) the (structure, land, or water) at _____ is hereby denied for failure to comply with Section _____ of the Zoning Ordinance because of the following:

Information on procedures for an appeal of this decision to the Board of Zoning Appeals can be obtained from this office. It should be noted that under Section 11.5 of the Zoning Ordinance and the Rules of Procedure adopted by the Board an appeal of this decision must be filed with the Secretary of the Board of Zoning Appeals within 30 days from the date of this letter.

Sincerely,

Zoning Inspector

cc: Board of Zoning Appeals
Village Plan Commission

Appendix E

MODEL NOTICE OF A ZONING VIOLATION

OFFICE OF THE ZONING INSPECTOR
VILLAGE OF _____, WISCONSIN

Date_____

REGISTERED MAIL

Mr. John Doe
960 Oak Street
_____, Wisconsin

Dear Mr. Doe:

As required under Section 2.2 of the Zoning Ordinance, you are hereby advised that you are in violation of Section _____ of the Zoning Ordinance of the Village of _____.

The following violations have been noted: _____

The following action (s) should be taken by (date): _____

The first violation is noted as having occurred _____(date)_____, and Section _____ of the Zoning Ordinance provides the following:

"Any person, firm, or corporation who fails to comply with the provisions of this Ordinance shall, upon conviction thereof, forfeit not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200) and costs of prosecution for each violation, and in default of payment of such forfeiture and cost, shall be imprisoned in the County Jail until payment thereof, but not exceeding thirty (30) days. Each day a violation exists or continues shall constitute a separate offense."

Please contact this office for any clarification of this matter.

Sincerely,

Zoning Inspector

cc: Village President
Village Attorney
Village Police Chief

Appendix F

MODEL APPEAL OR APPLICATION TO THE BOARD OF ZONING APPEALS

Instructions

Appeals and applications shall be filed with the Secretary of the Board of Zoning Appeals. The Secretary shall refuse appeals or applications that are not complete or are not legible.

Appeals

I hereby acknowledge receipt of written notification of the Zoning Inspector's permit refusal or notice of violation and do, therefore, appeal to the Board of Zoning Appeals for one of the following:

1. Review, reversal, or modification of the Zoning Inspector's permit refusal, correction order, or interpretation.
2. A variance to Section _____ of the Zoning Ordinance.

Date of previous appeal _____

Disposition of previous appeal _____

Application

I hereby apply for one of the following:

1. An interpretation of the regulations of the zoning ordinance or the boundaries of the zoning map.
2. Permission to substitute a more restrictive nonconforming use for an existing one.
3. A determination that an unspecified or unclassified use is permitted in a district.
4. A temporary use permit.

Date of previous application _____

Disposition of previous application _____

Names and Addresses

Applicant or Appellant _____

Owner of the site _____

Architect _____

Professional Engineer _____

Contractor _____

Description of the Subject Site

Address of premises affected _____

Lot _____ Block _____ Subdivision _____

Metes and Bounds Description _____

Zoning district classification _____

Description of existing operation or use _____

Description of the proposed operation or use _____

Number of employees _____

Type of structures _____

Attachments

The following required items shall be attached for all appeals and applications:

Plat of Survey prepared by a registered land surveyor showing the location, boundaries, dimensions, elevations, uses, and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets, and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; existing and proposed street, side, and rear yards. In addition, the plat of survey shall show the location, elevation, and use of any abutting lands and their structures within forty (40) feet of the subject site.

Names and Addresses of all abutting and opposite property owners.

Additional Information as may be required by the Village Plan Commission, Village Engineer, Zoning, Building, Plumbing, or Health Inspectors.

Fee Receipt from the Village Treasurer in the amount of Twenty-Five Dollars (\$25).

An appeal of the Zoning Inspector's permit refusal, correction order, or interpretation shall be accompanied by a statement as to why the Zoning Inspector's decision is in error. An appeal for a variance shall be accompanied by a statement of facts listing the appellant's special conditions that would cause a literal enforcement of the zoning ordinance to result in practical difficulty or unnecessary hardship. An application for a determination of unclassified uses shall be accompanied by a complete description of the process, operation or use, and comparisons with similar uses.

Certificate

I hereby certify that all the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief:

Applicant _____

Address _____

Date _____

Action

Date filed _____

Hearing date established _____

Notice published _____

Notice mailed _____

Hearing held _____

Disposition _____

Appellant or Applicant notified _____

Secretary
Board of Zoning Appeals

Appendix G

MODEL NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF ZONING APPEALS

Please take notice that a public hearing will be held by the Board of Zoning Appeals of the Village of _____, Wisconsin, on Tuesday, June 30, 1964, at 4:00 p.m. in the Village Hall at 23 Main Street, _____, Wisconsin, at which time the Board will consider the following appeals and applications:

1. The appeal of Mr. John Doe from the Zoning Inspector's determination that his proposed commercial structure to be erected at 15 Pine Street lies in the R-2 Residential District.
2. The appeal of Mr. John Smith for a variance to Section _____ of the Zoning Ordinance to permit the erection of a residence at 25 Oak Street to encroach five (5) feet into the required street yard of thirty-five (35) feet.
3. The application of the Neon Sign Company for an interpretation of Section _____ of the Zoning Ordinance to permit their proposed sign to face a residential district.
4. The application of the Wisconsin Electric Corporation to erect a substation on the northeast corner of Birch and Magnolia Streets.
5. The application of Mr. John Brown for permission to substitute a proposed nonconforming laundry pickup station for an existing nonconforming dry cleaning operation at 90 Main Street.
6. The application of Mr. John Black to erect a temporary sales office in the new Shrub Subdivision at 14 Briar Street.
7. The application of Mr. John Moon for a building permit to erect a structure in the bed of a proposed street that has been duly placed upon the Official Map of the Village of _____.

All interested persons will be given an opportunity to be heard.

Secretary
Board of Zoning Appeals

Published: July 15, 1964

cc: All appellants and applicants
All owners of abutting lands
All owners of opposite frontage
All owners within 100 feet
Board of Zoning Appeal Members
Zoning Inspector
Village Plan Commission

Appendix H
MODEL NOTICE OF A
BOARD OF ZONING APPEALS DECISION

BOARD OF ZONING APPEALS
VILLAGE OF _____, WISCONSIN

Date _____

Mr. John Doe
23 Oak Street
_____, Wisconsin

Dear Mr. Doe:

The Board of Zoning Appeals considered your (appeal or application) for _____ to Section _____ of the Zoning Ordinance to permit _____ at _____ at a public hearing on June 30, 1964.

On the basis of the following evidence presented at the public hearing:

the Board of Zoning Appeals granted, denied, or granted your appeal or application subject to the following conditions:

Landscaping Required

Shrubs: Type _____ Size _____ Location _____ Spacing _____

Trees: Type _____ Size _____ Location _____ Spacing _____

Grass: Sod/Seed _____ Location _____ Area _____

Screening: Type _____ Location _____ Height _____

Type of Construction _____

Hours of Operation _____

Traffic Circulation _____

Driveway Width _____ Location _____

Movement Direction _____

Yards Increased

Street _____

Side _____

Rear _____

Parking Requirements Increased _____

Permit Granted For a Period of Only _____

Additional Conditions _____

The Zoning Inspector has been notified of the Board's decision and will issue a permit to you subject to the above conditions.

You are hereby advised that if you are aggrieved by the decision of the Board of Zoning Appeals you may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition must be presented to the court within thirty (30) days after the filing of this decision in the Office of the Board of Zoning Appeals.

Sincerely,

Secretary
Board of Zoning Appeals

cc: Zoning Inspector
Village Plan Commission

Appendix I

MODEL REZONING PETITION

TO: THE HONORABLE PRESIDENT AND VILLAGE BOARD OF THE VILLAGE
OF _____, WISCONSIN

I, the undersigned, being owner of all the area herein described, hereby petition the Village Board of the Village of _____, Wisconsin, to rezone the following described property from R-2 Residential District to B-2 Business District.

All that part of the Southwest 1/4 of Section 34, Township 7 North, Range 19 East, Village of _____, _____ County, Wisconsin, described as follows:

Lot 6 of Block 10 of Wood Subdivision.

I have requested this rezoning for the purpose of erecting a vehicle service station. The following comments may be of assistance to the Village Board, Village Plan Commission and planning staff in reviewing this petition:

1. A Need exists today for service stations in this area. A large proportion of the Village's past and potential growth has and will occur in this area.
2. Main Street is a primary thoroughfare having a right-of-way width of 100 feet and carries 8,000 vehicles on an average weekday.
3. The Subject Parcel will be an extension of the present B-2 Business District that lies to the south.
4. Neighboring Uses on Main Street include the Lakeland Plaza Shopping Center, a barber shop, and two professional offices.
5. The Subject Parcel lies within a proposed commercial area delineated on the Village's Land Use Plan of 1961.
6. The Existing Nonconforming Repair Shop will be demolished and replaced by a modern service station.

Please find the following items attached:

Plot Plan drawn to a scale of one inch equals one hundred (100) feet showing the area to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts, and the location and existing use of all properties within two hundred (200) feet of the area proposed to be rezoned.

Owners' Names and Addresses of all properties lying within two hundred (200) feet of the area proposed to be rezoned.

Additional Information required by the Village Plan Commission, Joint Extraterritorial Zoning Committee, or Village Board.

Fee Receipt from the Village Treasurer in the amount of Twenty-Five Dollars (\$25).

I hereby certify that all the above statements and attachments submitted herewith are true and correct to the best of my knowledge and belief.

Owner, Agent, or Attorney

Address

Telephone Number

Date Filed _____

Village Clerk

Appendix J

MODEL NOTICE OF
PUBLIC HEARING ON A REZONING PETITION

Please take notice that a public hearing will be held by the Village Board of the Village of _____, Wisconsin, on Tuesday, June 30, at 7:30 p.m. in the Village Hall at 23 Main Street, _____, Wisconsin, at which time the Village Board will consider the petition of Mr. John Smith to rezone the following described property from R-2 Residential District to B-2 Business District:

All that part of the Southwest 1/4 of Section 34, Township 7 North, Range 19 East, Village of _____, _____ County, Wisconsin, described as follows:

Lot 6 of Block 10 of Woods Subdivision.

All interested persons will be given an opportunity to be heard.

Village Clerk
Village of _____

Published: June 5, 12, and 19, 1964

cc: All clerks of adjacent municipalities
All property owners within 200 feet

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Appendix K
COMPARATIVE ZONING POWERS*

SUBJECT	COUNTY	TOWN	CITY AND VILLAGE
1. <u>Authority</u>	Sections 59, 97 and 59, 99**	Sections 60, 18(12), 60, 74 and 60, 75**	Sections 61, 35 and 62, 23**
2. <u>Jurisdiction</u>	The areas within the county that are outside the limits of incorporated villages and cities. Ordinance not effective in any town until approved by the town board, except county-owned lands provided that the county board shall give written notice of their intent to the town board and hold a public hearing with notice. A county zoning ordinance continues in effect over areas subsequently annexed until rezoned by the municipality.	The areas within the town that are outside the limits of incorporated villages and cities. Towns may adopt the county zoning ordinance if one exists. If no county zoning ordinance exists, towns may adopt a town zoning ordinance under s. 60, 74; but they must petition the county board to adopt a county zoning ordinance and may only proceed if the county board fails to adopt an ordinance. Towns may also adopt village powers and thereby make use of city zoning powers, but such a zoning ordinance is subject to the approval of the county board in counties that have a county zoning ordinance.	Villages have the same zoning powers granted to cities. Cities and villages may zone outside of their corporate limits in unincorporated areas within a radius of 1 1/2 miles of fourth class cities and villages and 3 miles from all other cities. A county zoning ordinance continues in effect over a subsequently annexed area until rezoned by the municipality.
3. <u>Zoning Powers</u> a. Purpose	Promote the public health, safety and general welfare.	Promote the public health, safety and general welfare.	Promote the health, safety, morals, or the general welfare of the community.
b. Standards	Such regulations as the county board shall deem best suited to carry out the purposes of this section.	Regulate, restrict, and determine the areas within which certain uses may be conducted.	The regulations shall be made in accordance with a comprehensive plan and designed to: Lessen congestion in the streets; To secure safety from fire, panic, and other dangers; To promote health and general welfare; To provide adequate light and air; To prevent the overcrowding of land; To avoid undue concentration of population; To facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration of the character of the district, its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality. The regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, and temporary structures shall not be discriminated against.
c. Districts	Establish districts of such number, shape and area and regulate and restrict those areas.	Establish districts of such number, shape and area as may be necessary for stated purposes and adopt a zoning map showing those areas which the town board deems best suited to carry out the purpose.	Establish districts of such number, shape, and area as may be deemed best suited.
d. Subjects of Regulation	Agricultural, forestry, industrial, business, recreational, and residential areas. Floodway and flood plain areas. Trailer camps, tourist camps, motels, and mobile home parks. Certain area's uses or purposes subject to special regulations. Location of buildings and structures designed for specific uses. Designations of uses for which buildings and structures may not be used or altered. Location, height, bulk, number of stories and size of buildings and other structures. Location of roads and schools. Building setback lines. Density and distribution of population. Percentage of lot which may be occupied, size of yards, courts, and other open spaces.	Agriculture, forestry, recreation and industries. Floodway and flood plain areas. Trailer and tourist camps. Location of buildings designed for specified uses. Location, height, bulk, number of stories, and size of buildings and other structures. Location of roads and schools. Setback building lines. Density and distribution of population. Percentage of lot which may be occupied, size of yards, courts, and other open spaces. The uses for which buildings may not be erected or altered. Objects of natural growth in the vicinity of any airport.	The location and use of buildings, structures and land for trade, industry, residences or other purposes. The height, number of stories and size of buildings and other structures. The density of population. The percentage of lot that may be occupied. The size of yards, courts, and other open spaces. The erection, construction, reconstruction, alteration or use of buildings, structures or land.
4. <u>Zoning Agency</u>	The county board designates the county park commission, rural planning board, county highway committee, or a special zoning committee as its agency in all matters pertaining to county zoning.	The Town Park Commission, or if none exists, the town board may appoint a town zoning committee consisting of five members.	The plan commission or board of public land commissioners; if neither exists, a plan committee of the governing body.
5. <u>Adoption Procedure</u> a. Public Hearing	The zoning agency shall hold the public hearing.	The zoning agency shall hold the public hearing.	The zoning agency shall hold the public hearing.
b. Notice	Notice of such hearing shall be by publication at least once each week for three (3) successive weeks in the official newspaper of the county or, if there be none, in a newspaper of general circulation in the county.		Ten days' written notice shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed plan and regulations.
c. Report	Final draft of the proposed Ordinance is submitted to the county board for its consideration prior to adoption.	The town zoning agency shall first formulate a tentative report before submitting the final report to the town board.	The zoning agency shall formulate tentative recommendations and after the public hearing recommend the district plan and regulations to the governing body.
6. <u>Interim Zoning</u>			The governing body may enact an interim zoning ordinance, as an ordinary ordinance for a period not to exceed two years without referring the matter to the plan commission, to preserve existing uses while a comprehensive zoning plan is being prepared.
7. <u>Nonconforming Uses</u> a. Existing	The lawful use of any building or premises for any trade or industry existing at the time the Ordinance takes effect shall not be prohibited; however, the continuance of a nonconforming use of a temporary structure may be prohibited.	The continuance of the use of any building or premises for any trade or industry used at the time the ordinance takes effect shall not be prohibited except that the town board may by eminent domain, remove or alter any buildings, structures, or objects of natural growth that are contrary to the Ordinance in the vicinity of any airport.	The lawful use of a building or premises existing at the time of the adoption or amendment of the Ordinance may be continued although such use doesn't conform with the Ordinance.
b. Alteration	Alteration of, addition to, or repair in excess of 50% of assessed value of any existing building or structure for carrying on any prohibited trade or new industry may be prohibited.	Alteration of or addition to any existing building or structure for the purpose of carrying on any prohibited trade or new industry may be prohibited.	Nonconforming uses may not be extended, and total structural repairs or alterations in a nonconforming building shall not during its life exceed 50% of the assessed value of the building unless permanently changed to a conforming use.
c. Discontinuance	If a nonconforming use is discontinued for a period of twelve (12) months, any future use of the building and premises shall conform to the Ordinance.	If a nonconforming use has been discontinued, any future use of the building, land or premises shall be in conformity with the Ordinance.	If a nonconforming use is discontinued for a period of twelve (12) months, any future use of the building and premises shall conform to the Ordinance.
d. Recordation	If the county does not issue building permits, occupancy permits, or provide for other procedures for enforcing the Ordinance, the zoning officer shall cause a record to be made immediately of all lands, premises, and buildings used for purposes not conforming to the Ordinance. Discontinued and newly created nonconforming uses shall be recorded with the register of deeds immediately after the annual listing.	If the town does not issue building permits or provides for other means of enforcing the zoning ordinance or of checking nonconforming uses, the town board shall cause to be made a record of the present use of all buildings and premises used for purposes not conforming to the regulations of the district in which they are situated.	
8. <u>Appeal Procedure</u> a. Establishment	The county board may provide for a Board of Adjustment.	The town board may provide for a Board of Adjustment.	The governing body shall provide for a Board of Appeals.
b. Membership	Members are approved or elected by the county board depending upon the size of the county.	The Board shall consist of 3 town residents appointed by the town board.	The Board shall consist of 5 members appointed by the mayor or president, subject to confirmation by the governing body, for terms of 3 years.
c. Powers (1) General	The Board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the Ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. The Board may also administer oaths and compel the attendance of witnesses.	Same as county.	Same as county.
(2) Errors	Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by a zoning official.	Same as county.	Same as county.
(3) Special Permits	Hear and decide special exceptions to the terms of the Ordinance.	Same as county.	To hear and decide special exceptions to the terms of the ordinance including buildings to be erected or premises to be used for public utility purposes.
(4) Variances	Authorize variances from the terms of the Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done.	Same as county.	Authorize variances from the terms of the Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions will result in practical difficulty or unnecessary hardship so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.
d. Rules	The county board shall adopt rules for the conduct of the Board of Adjustment's business; and the Board may adopt further rules as necessary.	The town board shall adopt rules for the conduct of the Board of Adjustment's business; and the Board may adopt further rules as necessary.	The Board shall adopt rules in accordance with the Ordinance.
e. Meetings	Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public.	Same as county.	Same as county.
f. Minutes	The Board shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.	Same as county.	Same as county.
g. Vote Required	The concurring vote of a majority of the Board shall be necessary to reverse any order, requirement, decision, or determination of any zoning official; to grant a variance; or to decide in favor of the applicant on any matter upon which it is required to pass.	Same as county.	The concurring vote of 4 members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any zoning official; to grant a variance; or to decide in favor of the applicant on any matter upon which it is required to pass.
h. Appellant	Appeals to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the zoning official. Such appeal shall be taken within a reasonable time as provided by the rules of the Board.	Same as county.	Same as county.
i. Hearing	The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time.	Same as county.	The Board shall fix a reasonable time for the hearing of the appeal or other matters referred to it, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.
j. Court Review	Any person aggrieved by any decision of the Board or any taxpayer or any officer, department, board, or bureau of the municipality may petition a court of record, setting forth that such decision is illegal and specifying the grounds of illegality. Such petition shall be presented to the court within 30 days after the filing of the petition in the office of the Board.	Same as county.	Same as county.
9. <u>Enforcement</u> a. Rules and Regulations	The county board shall prescribe such rules, regulations, and administrative personnel and procedures as it may deem necessary for enforcement.	The town board shall prescribe rules and regulations as it may deem necessary for enforcement.	The governing body may provide by ordinances for enforcement.
b. Penalties	Ordinances shall be enforced by appropriate fines and penalties.	Ordinances shall be enforced by appropriate fines and penalties.	Ordinances may be enforced by fine, imprisonment for failure to pay such fine, and other civil penalties. Violators shall be deemed guilty of misdemeanors and upon conviction fined not more than \$500.
c. Remedies	Compliance with such ordinances may be enforced by injunctive order at the suit of the county or owners of real estate within the district affected.	Compliance with such ordinances may be enforced by injunctive order at the suit of the town or the owner of real estate within the district affected.	The municipality or any adjacent or neighboring property owner who would be specially damaged by a violation may institute appropriate action or proceedings to prevent, restrain, correct, enjoin or abate such a violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises, or cause such illegal structure to be vacated or removed.
d. Administration	Zoning agency designated by the county board oversees the administration of the Ordinance, and the county board shall designate an officer to administer the ordinance.		The governing body may establish and fill the position of building inspector to enforce the Ordinance.
10. <u>Changes and Amendments</u> a. Authority	The county board may amend the regulations of the Ordinance or change the district boundaries.	The town board may alter, supplement, or change the boundaries or regulations contained in the Ordinance.	The governing body may change the district and regulations.
b. Initiation	A petition for amendment shall be filed with the county clerk and may be made by: 1. Any property owner in the area to be affected by the amendment. 2. The town board of any town wherein the Ordinance is in effect. 3. Any member of the county board or 4. The county zoning agency.		
c. Referral	The rezoning petition shall be referred directly to the county zoning agency for its consideration, report and recommendations.		The proposed changes shall be first submitted to the zoning agency for recommendation and report.
d. Hearing	The county zoning agency shall call a public hearing thereon giving notice of the time and place by publication once each week for three (3) successive weeks. A copy of such notice shall be sent by registered mail to the town clerk of each town affected by the proposed amendment at least ten (10) days prior to the hearing.	A hearing shall be granted to any person interested at a time and place to be specified in the notice. Each notice shall be published at least three (3) times during the 15 days prior to the date of the hearing.	Any person shall be given an opportunity to be heard. Notice shall be at least ten days before the hearing and shall be published at least three times during the preceding 30 days. Ten days' written notice shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of the land to be affected by the proposed change.
e. Protest	A protest against a proposed amendment may be made by the owners of 20 percent or more of the area proposed to be altered or by the owners of at least 20 percent of the frontage immediately in the rear or along the side boundaries thereof within 300 feet of the area proposed to be changed or by the owners of at least 20 percent of the frontage directly opposite and across a public street, highway, or alley from the area proposed to be altered.	A protest against a proposed amendment, supplement, or change may be made by the owners of 20 percent or more of the frontage proposed to be altered or by the owners of at least 20 percent of the frontage immediately in the rear thereof, or by the owners of at least 20 percent of the frontage directly opposite the frontage proposed to be altered.	A protest against a change may be made by the owners of 20 percent or more of the areas of the land included in such proposed change, or by the owners of 20 percent or more of the area of land immediately adjacent extending 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land.
f. Protest's Effect	The amendment cannot be adopted except by the affirmative vote of three-fourths (3/4) of the members of the county board present and voting.	The amendment cannot be adopted unless recommended by a majority vote of the Town Park Commission or zoning committee.	The change cannot be adopted except by the favorable vote of three-fourths of the members of the governing body.
11. <u>Construction of Powers</u>	Powers granted shall be liberally construed in favor of the county and shall not be construed to limit or repeal any powers now possessed by the county.	Powers granted to be liberally construed in favor of the town and shall not be construed to limit or repeal any powers now possessed by the town.	Any ordinance, resolution, or regulation enacted shall be liberally construed in favor of the municipality, and as minimum requirements, and shall not be deemed a limitation of any power granted elsewhere.
12. <u>Soil Conservation Zoning</u>	Section 29.09** provides that the supervisors of any soil and water conservation district may formulate land use regulations for conserving soil resources and controlling erosion; hold public hearings thereon, and draft and recommend a soil conservation ordinance to the county board. The county board may enact such Ordinance provided at least 2/3 of the land occupiers affected approve such Ordinance in a referendum.		
13. <u>Airport Zoning</u>	Section 114.136** provides that any county, city, village, or town that is the owner of a site for an airport which has been approved for such purpose by the appropriate agencies of the state and the federal government may protect the aerial approaches to such site by an ordinance regulating, restricting, and determining the use, location, height, number of stories, and size of buildings and structures and objects of natural growth in the vicinity of such site. Such Ordinance shall be effective whether the site and lands affected are located within or without the limits of such county and may be administered without the consent of any other governing body.	Same as county.	Same as county.

* Adapted from the Comparative Zoning Powers chart prepared by the University of Wisconsin Law School, March, 1963.

** Wisconsin Statutes, 1961, including Chapters 212, 241, and 459, Laws of 1963.

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BIBLIOGRAPHY

1. Bair, Fred H., Jr., and Ernest R. Bartley, The Text of a Model Zoning Ordinance, ASPO, Chicago, Illinois, Second Edition, 1960.
2. Bartholomew, Harland, Land Uses in American Cities, Harvard University Press, Cambridge, Mass., 1955.
3. Berman v. Parker, 348 U. S. 26, 75 S.Ct. 98, 98 L. Ed. 27 (1954).
4. Blucher, Walter, "Is Zoning Wagging the Dog?" Planning 1955, ASPO, Chicago, Illinois, 1956.
5. Brandt v. Pewaukee Town Board, 15 Wis. 2d 6, 112 N.W. 2d 157 (1961).
6. Diehl v. Dunn, 13 Wis. 2d 280, 108 N.W. 2d 519 (1961).
7. Eggebeen v. Sonnenburg, 239 Wis. 213 1 N.W. 2d 84, 138 A.L.R. 495 (1942).
8. Green County v. Monroe, 3 Wis. 2d 196, 87 N.W. 2d 827 (1958).
9. Higbee v. Chicago, B. & O. R. Co., 235 Wis. 91, 292 N.W. 320, 128 A.L.R. 734 (1940).
10. Highway Research Board, Parking Requirements in Zoning Ordinances, Washington, D. C., 1955.
11. Jefferson County v. Timmel, 261 Wis. 39, 51 N.W. 2d 518 (1952).
12. League of Wisconsin Municipalities, Zoning Board of Appeals, Madison, Wisconsin, 1960.
13. Mezel v. Mobley, 21 Ill. 2d 20, 170 N.E. 2d 595 (1960).
14. Rosenberg v. Whitefish Bay, 199 Wis. 214, 225 N.W. 838 (1929).
15. State ex rel. Brill v. Mortenson 6 Wis. 2d 325, 96 N.W. 2d 603 (1959).
16. State ex rel. Carter v. Harper, 182 Wis. 148; 196 N.W. 451, 33 A.L.R. 269, (1923).
17. State ex rel. A. Hynek & Sons Co., v. Bd. of Appeals, 267 Wis. 309, 66 N.W. 2d 623 (1954).

18. State ex rel. Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W. 2d 217 (1955).
19. State ex rel. Tingley v. Gurda, 209 Wis. 63, 243 N.W. 317 (1932).
20. State of Wisconsin's Attorney General's Opinion, 38 Op. Atty. Gen. 12 (1949).
21. Vaicelinas v. Fechner, 7 Wis. 2d 14, 95 N.W. 2d 786 (1959).
22. Village of Euclid v. Amber Realty Co., 272 U. S. 365, 47 S.Ct. 114, 17 L.Ed. 303, 54 A.L.R. 1016 (1926).
23. Whitnall, Gordon, "New Concepts in Planning and Zoning." Institute On Planning and Zoning, Southwestern Legal Foundation, Dallas, Texas, 1963.

LIST OF PUBLISHED PLANNING GUIDES

Land Development Guide, Planning Guide No. 1, SEWRPC, 1963.

Official Mapping Guide, Planning Guide No. 2, SEWRPC, 1964.

Zoning Guide, Planning Guide No. 3, SEWRPC, 1964.

STAFF
SOUTHEASTERN WISCONSIN REGIONAL
PLANNING COMMISSION

Old Courthouse
P. O. Box 8

Waukesha, Wis.
53187

Kurt W. Bauer Executive Director

Central Office

William J. Kockelman Chief Community Assistance Planner

Dallas R. Behnke Planning Illustrator

Land Use-Transportation Study Office

J. Robert Doughty Study Director

Richard B. Sheridan Chief Transportation Planner

Harlan E. Clinkenbeard Chief Land Use Planner

Kenneth J. Schlager Chief Systems Engineer

Sheldon W. Sullivan Administrative Officer

Wade G. Fox Cartography and Design Supervisor