

Plan Commission Special Meeting Legal Presentation

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Overview

Land Use Legal Framework in Wisconsin

Role of the Plan Commission

Quasi Judicial Body & Best Practices

Ethics

Roberts Rules Refresher

Open Meetings Law

Public Records Law

WI Land Use Legal Framework

Wisconsin Authority Framework

- State of WI as a sovereign body has inherent general powers
- Cities are “creatures” of the State
- **“Home Rule Amendment”** in WI Constitution – “[c]ities . . . may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city”
 - Pre-emption
- **Specific Statutory Authority** – “enabling” laws

What is “Land Use”?

- Planning – A look at how the pieces of a community (buildings, roads, parks etc.) fit together and how development goals can be achieved, what are the needs of the residents today and future residents?
- Zoning – A specific set of rules and regulations, one tool used to implement community goals and objectives set out in the community’s plan. A zoning ordinance identifies different districts within a community and regulates the use (or form) of property within those districts.
- Subdivision – regulations that address the quality of development (the availability of public services, layout of site, etc.)



Law & History

Historical Context

- In WI, the earliest land use laws predate state formation (1848)
- Industrial revolution resulted in the rapid growth of cities; zoning laws passed
- 1920 – Milwaukee one of first American cities to adopt a comprehensive zoning ordinance, upheld by WI Supreme Court in 1923 as a legitimate use of the police power
- City of Madison Plan Commission established in 1931



Role of the Plan Commission

Plan Commission Enabling Law

- Wis. Stat. 62.23 “City Planning” including zoning enabling statute
- Allows a city, village or town to form plan commissions
- Requirements about the formation and composition
- Functions:
 - Development of a comprehensive plan
 - Approve certain plats, review subdivisions
 - Review and provide recommendations about zoning ordinances to the Common Council (zoning text amendments)
 - Reviews and provides recommendations to the Common Council about official maps (zoning map amendments)
 - Other abilities such as ordering reports, holding public meetings, etc.

Comprehensive Plan Wis. Stat. §66.1001

- A Comprehensive Plan must:
 - Address 9 elements
 - Include written procedures for public participation
 - Be widely distributed for review/comment
 - Be adopted by ordinance following public hearing
 - Be updated at least once every 10 years
- Plan Commission develops and recommends adoption of plan, updates, reviews new/amended zoning, subdivision and map amendments for consistency with Comp Plan.
- Beginning Jan. 1, 2010, new or amended zoning, land division and official mapping ordinances must be *consistent with plan*
 - Consistent means “furthers or does not contradict the objectives, goals and policies of the comprehensive plan” (2009 Wisconsin Act 372)

Land Divisions & Subdivisions

- WI platting law provides for local control of the subdivision process, subject to minimum statutory requirements (Wis. Stat. Chapter 236)
- MGO Sec. 16.23
 - CSMs – Divide into 4 or fewer sub parcels
- The Plan Commission and Common Council evaluate whether the land is suitable for its proposed use – adequacy of public facilities & infrastructure, Comprehensive Plan recommendations
- Counting clock for making a decision

Madison General Ordinances

- Assigns the Plan Commission review of conditional uses
- Assigns Plan Commission role in reviewing certain demolition applications
 - Recently adopted ordinance change
 - Plan Commission reviews certain demolition requests after the Landmarks Commission reviews for historic value
- Creation of the UDC as an advisory body of the PC
- Recommendations on creation of Historic Districts

PC Engages in 2 Types of Government Actions

Legislative

Adoption of general public policies and laws

Examples: Adoption of a Comprehensive Plan, adoption of zoning ordinance, rezoning a parcel of property

(*Quinn v. Town of Dodgeville* (1985) – zoning and rezonings functions are legislative acts)

Quasi Judicial

Apply adopted laws & policies to individual cases

More likely to raise issues of fairness

Example: Making decisions on Conditional Use applications

Legislative

Policies

Plans

Ordinances

Pre-determined standards
apply.
Conditions may be applied.
Discussion only during the
hearing.

Quasi Judicial

Conditional Uses

Variances (ZBA)

Administrative
Appeals (ZBA)

Administrative

Permits (apply
ordinances as
written)

**Most
Discretion**

**Least
Discretion**

Zoning Text & Map Amendments

- Legislative function
- MGO Sec. 28.182
- Amending the zoning code in “order to promote public health, safety, and welfare throughout the City, giving due consideration to existing conditions, conservation of property values, building development providing best advantage to the City, the current use of property, and in the case of map amendments, the cost of providing municipal services to the property and uses accommodated by the map amendment.”
- Make recommendation to Council – Council is deciding body

Conditional Use Approvals

- Quasi judicial function
- MGO 28.183
- A conditional use is not suited to all locations in a zoning district but may be allowed if it meets specific conditions set out in the zoning ordinance and is not contradictory to the ordinance's purpose statement.
- Plan Commission is deciding body (appeals to Council)
- Reviews applications to see if can meet approval standards in the ordinance
- May impose 'conditions' to allow use at that location
- Separate from other standards, like supplemental regulations

Conditional Use Legal Landscape

- Until 2017, statutes did not discuss conditional uses
- Wis. Stat. 62.23(7)(de.), *“if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.” Substantial Evidence is defined in the statutes as “means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.”*
- Conventional WI legal analysis interpreted this as a general curtailing of municipal discretion, subsequent statewide court cases have supported this
- Car wash example

Quasi Judicial Bodies Best Practices

Procedural Due Process

- Quasi judicial bodies must follow due process – basic concept of fairness
- WI and US constitutional provisions
- *Procedural* Due Process is the means employed to make a government decision
- When the Plan Commission makes a decision that affects specific individuals (i.e. conditional use) it must follow the rules of procedural due process. These rules include:
 - Providing adequate notice (staff)
 - Ensuring that each decision maker is impartial and unbiased.
 - Avoiding, and disclosing when necessary, ex parte contacts.
 - Providing an opportunity to present at hearings.
 - Basing decisions on clear, pre-existing standards and factual evidence in a record that is available for review.

Certiorari Review

- When conducting certiorari review, a court “**reviews the record** compiled by the municipality and does not take any additional evidence on the merits of the decision.”
- Certiorari review of a legislative decision includes the following four inquiries: “(1) whether the [local body] kept within its jurisdiction”; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that [the local body] might reasonably make the order or determination in question.” *Ottman v. Town of Primrose*

Note – the same review is given to legislative decisions

Best Practices

- Apply the standards to the individual situation
- Give each applicant the same impartial consideration based on the relevant factual determinations and standards
- Use tools at your disposal if insufficient information is presented for you to make a decision
- Cite to evidence that supports or dissuades – staff reports, public testimony, other submitted materials
- Do not state the conclusions without facts to support
- Adopt findings of fact

Ethics Code

Purpose & Overview

- **MGO Sec. 3.35**
- Applies to all elected City officials, employees and appointed BCC members (including sub-committees and ad hoc committees)
- Establishes guidelines for City elected officials, employees and appointees to:
 - (a) act impartially, responsibly and independently
 - (b) make decisions and policies through proper channels of City governmental structure
 - (c) serve the public interest rather than some private interest

Key Definitions

- “Incumbent” – elected official, employee, or BCC member
- “Associated” – you or a family member are an officer or director or have a 2% interest in the organization
- “Immediate family” – spousal equivalent, related by marriage, adoption or lineally
- “Economic, financial or personal interest” – anything more than nominal

Obligations under the Ethics Code

- Annual Financial Disclosure on **Statement of Interest**
- **Standards of Conduct**
 - Use of Office or Position – no incumbent may use their position to obtain financial gain or anything of value or any advantage, privilege, or treatment for their private benefit, their immediate family and an organization they are associated with. Nor may an incumbent take an official action on something that may affect a family member or association in which they have a personal or financial interest.
 - Disclosure or Disqualification – if an incumbent has financial or personal interest in a matter coming before a BCC, they must disclose the nature and extent of the interest and, if necessary, disqualify themselves from discussion and voting.

Obligations Continued

- **Standards of Conduct cont'd**
 - Influence and reward
 - Privileges and advantages
 - Outside employment
 - Disclosure of information
 - Receipt of anything of value
 - Nepotism
 - Contract or leases

What is the Ethics Board?

- City of Madison appoints an Ethics Board to answer questions, render opinions and hear complaints.
- 7 members, confirmed by CC
- Advisory Opinions – if unsure about the Code's application, incumbents may ask the Ethics Board for an advisory opinion
- Any City resident may file a timely complaint to the Board about the activity or conduct of a person covered by the code

Robert's Rules

What do you need to know?

- Robert's Rules is approximately 700 pages long. You do not need to know all 700 pages. However, you should know basic rules regarding quorum, participating in discussion, making motions, and voting.
- Before getting to Robert's Rules, however, you should know that the City has adopted some rules (MGO Sec. 33.01 & MGO Chapter 2) that apply instead of/in addition to Robert's Rules.

MGO Sec. 33.01

- Governs City Boards, Committees and Commissions. Revised in 2009.
- Establishes quorum for BCCs is a majority of members. **For Plan Commission quorum is 5 members.**
- Establishes 15-minute rule on quorum. If there are not 5 members at that point, the PC shall adjourn and the only action the body can take is to set a date and time for its next meeting.
- Provides that BCCs may establish own rules (except for reconsideration) that do not conflict with other ordinances.
- Absent special rules or other ordinances, Robert's Rules applies.

Discussion, Motions & Voting

Alternate PC Commissioners and Common Council Alders may participate in discussion, questioning and debate but **may not make motions or vote.**

Counting majority vote: 33.01(8)(d), MGO:
“In the absence of any statute or ordinance to the contrary, motions before any Sub-unit shall be passed by an affirmative vote of not less than ***a majority of the Sub-unit in attendance*** so long as such majority vote ***is not less than a majority of the quorum of Sub-unit.***”

Chair shall not vote “unless the chair’s vote would affect the outcome of the matter.” (MGO Sec. 33.07(1)(c)). Breaking a tie would affect the outcome of a matter. But, in some cases, a Chair’s vote may affect the outcome even when there is not a tie because their vote may be the vote that allows the motion to pass.

# of attendees	# votes need to pass a motion
5 (bare quorum)	3
6	4
7	4
8	5
9	5

Information also laid out in PC Policy Manual

MGO Chapter 2

Reconsideration

- Chapter 2, MGO, sets standing rules for Council. The only rule you really need to know in Chapter 2 is found in 2.21, reconsideration, which applies to boards, commissions, and committees as well as to the Council:
- “It shall be in order for any member ***who voted in the affirmative on any question which was adopted***, or for ***any member who voted in the negative when the number of affirmative votes was insufficient for adoption*** to move a reconsideration of such vote, **at the same or next succeeding regular meeting** of the Council. It shall be in order for ***any member who was, due to an excused absence, not present at the time the question was considered*** to move reconsideration of such vote ***at the next succeeding regular meeting of the Council***. A motion to reconsider having been lost shall not be again in order. A motion to reconsider shall not be in order when the same result can be obtained by another motion.”
 - A two-step process -- a motion to reconsider must be approved before the matter will be reconsidered. If the motion is approved, then the matter being reconsidered is back before the body as if it had not yet been considered.
 - Don't wait until the next meeting to let people know you are going to move to reconsider. If you wish an item to be reconsidered, let staff know with enough time to ensure that the Motion to Reconsider is listed as an item on the agenda of the “next succeeding regular meeting.”

Robert's Rules 101

- The most basic rule of Robert's Rules: **proceed by motion.**
 - Example of a PC motion
- No magic words: "I move that____", "I move adoption of____", "Move referral."
- BCC Chairs can ask for a motion.
- Role of staff is to help!
- Keep close track of motion. Easy to do if it is "Motion to Approve." More difficult if it is "Motion to Approve with condition that"
- No matter what, key is to be able to clearly tell what action the body took.
 - Example - move to open and close the public hearing

Robert's Rules – Classes of Motions

- **Main motion.** Underlying matter before the body.
- **Subsidiary motions.** To do something with or to the main motions (e.g., amend, refer).
- **Incidental motions.** Procedural matters related to the main motion that take precedence (e.g., point of order, suspend the rules).
- **Privileged motions.** Limited number that take precedence (recess, privilege, adjourn).

Main Motions and Amendments

- Motion to amend is a motion to modify the wording and, within certain limits, the meaning of a main motion before the body acts on the main motion.
- Amendment must still be germane to the main motion; it can't introduce a new subject under the pretext of being an amendment.
- A motion to amend takes precedence over the main motion – **must deal with it first before voting on the main motion.**
- If amendment is approved, then main motion is back before the body as modified.
- **Friendly amendment** is a change to a motion that is accepted by the original mover (and seconder, if applicable) without debate or a formal vote.

Robert's Rules – Amending an amendment?

- RR allows two degrees of amendment, but normally not 3.
- So, the body can:
 - Make a main motion;
 - Move to amend the main motion (primary amendment); and
 - Move to amend the amendment (secondary amendment).
 - **Generally, third amendment not allowed**, but any number of each can be considered in succession – **just not more than one primary and one secondary at one time.**

Open Meetings

Open Meetings Law

“ . . . A representative government of the American type is dependent upon an informed electorate . . . [therefore] the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” Wis. Stat. 19.18(1)

- Wisconsin Statutes Secs. 19.81 – 19.98
- MGO Sec. 3.71
- APM 3-13

Purpose of the Law

- **The purpose of the law is for the public to be able to observe not only the laws or policies enacted but also observe the process by which they are created.**
- The public is entitled to observe not only the actions taken by a public body but also who is trying to influence that body and the information the body is relying upon.
- The law applies to sessions where no action will be taken – i.e. purely informational gathering and/or discussion.

What is a “Meeting”?

- **Two Factor Test**
 - (1) Engagement in governmental business, discussion/debate, informational gathering, public hearings, or decision making
- AND**
- (2) Sufficient number of members present that can determine the body’s course of action on the subject under discussion

Caution!

- Open Meetings Law applies in two situations where quorum may not be present:
 - **Negative Quorum** – a gathering of less than a quorum but enough members that they can block passage of an item
 - **Walking Quorum** – serial gatherings or contacts (phone calls, emails, video chats, text messages) among members such that a quorum or negative quorum exists – it renders an actual meeting a mere formality.
 - Example: Citizen emails idea to all members and then members engage in email discussions, shares emails with other members – quickly it could turn into a quorum of members exchanging thoughts.
 - “Wheel Hub Walking Quorum” – use of staff person (or another intermediary) to engage in a series of communications that would otherwise violate Open Meetings Law
- Social gatherings are ok if the meeting is not an attempt to circumvent public meetings law and the business of the parent body is not discussed
 - If quorum is present, body is presumed to have held a meeting and has the responsibility of proving it did not meet to engage in governmental business.
- **Tours and Site Visits** – are meetings and must be properly noticed.
 - How are members getting there? Could there be a quorum present in transportation options?

Public Records Law

General

- Legal presumption in favor of access to government records
- Requests may be oral or in writing
- No reason for the request is required
- The request must be liberally constructed
- A 'record' is virtually everything containing information if its has been created or is being kept by government officials/bodies
- Public Records Law does not require the creation of a record
- Balancing Test – whether the harm to the public interest from inspection of the records outweighs the public interest in favor of inspection of such records

Exceptions

- The Records Custodian may identify materials that will not be included in the public records request or consult with the Office of the City Attorney
 - Personal Documents – materials maintained for your own personal use
 - Personal Notes – if used solely to refresh memories at a later date but only if not shared with others
 - Attorney Client Privilege – held by the “client” and can be broken, once lost can’t be put back in the box

Thank you

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