Lee, Chris

From: Larraine MCNAMARA MCGRAW <lmacmac@mac.com>
Sent: Monday, September 12, 2022 3:18 PM
To: Murphy, Michael (Alderman); Bauman, Robert; Dimitrijevic, Marina; Perez, Jose; Stamper II, Russell
Cc: Lee, Chris; Larraine Mac; Larraine MCNAMARA MCGRAW
Subject: Fwd: ZND letter
Attachments: Zoning_Kevin_Struck.pdf; Janet letter.9.11.22.pdf; JoanS.letter.pdf; LMM.ZND. 9.12.pdf

[You don't often get email from lmacmac@mac.com. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

Dear Alderpersons,

Please find attached my letter in opposition to the St Mark’s development as proposed.
Also, I have attached the treatise which I reference and the two Letters to which I have alluded.

Thank you for your service.

Kind regards,
Larraine

BLACK LIVES MATTER
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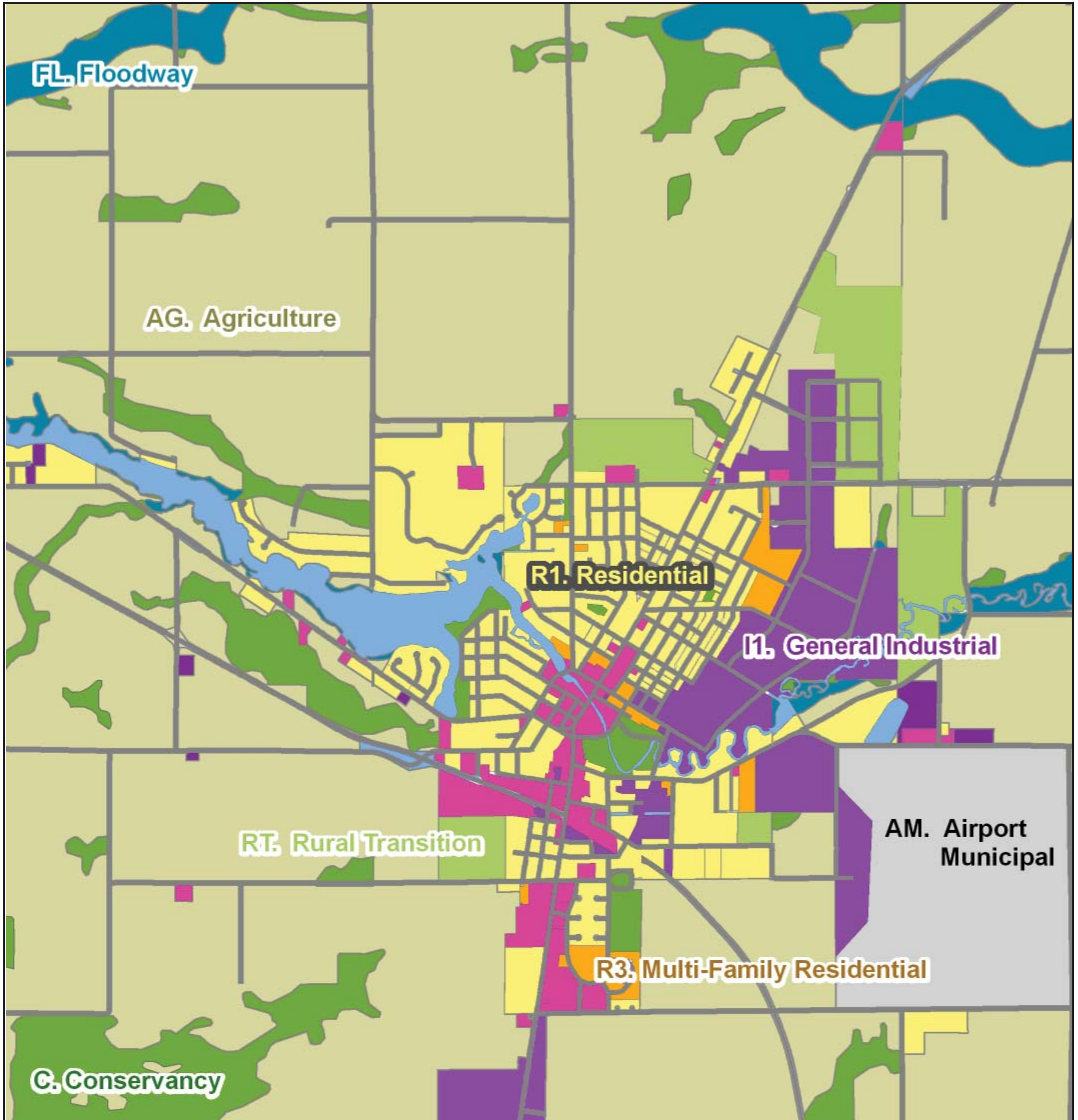
Zoning



Adapted by Kevin Struck
University of Wisconsin-Extension

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The above sections are adapted from the "*Guide to Community Planning in Wisconsin,*" 1999, University of Wisconsin-Extension, by Brian Ohm, Assistant Professor, Department of Urban & Regional Planning, University of Wisconsin-Madison. www.lic.wisc.edu/shapingdane/resources/planning/library/book/other/title.htm

EXTRATERRITORIAL ZONING (ETZ) 33

Sources on extraterritorial zoning jurisdiction include: Wisconsin Department of Administration – Office of Land Information Services; "Using Extraterritorial Zoning to Protect a Municipality's Interests Outside its Boundaries: A Case Study" by Attorney John Laun; "County & Local Government Land Use Planning & Regulation" by James Schneider, J.D. Compiled by Kevin Struck, Growth Management Educator, University of Wisconsin-Extension

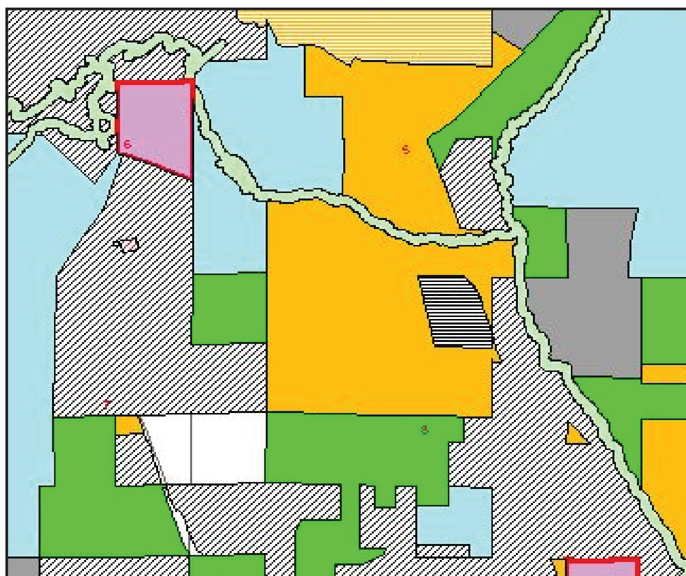
Wisconsin Law and Code of Ordinances: http://wsll.state.wi.us/ordinances.html (from this webpage, click on a county or municipality for their local ordinances)

THE ZONING FRAMEWORK

Zoning is one tool used to carry out community goals and objectives as set forth in a comprehensive or land use plan. The first comprehensive zoning ordinance in the United States was enacted in New York City in 1916. Milwaukee quickly followed, adopting the first comprehensive zoning ordinance in Wisconsin. That ordinance was upheld by the Wisconsin Supreme Court as a valid exercise of the police power in 1923.

Other Wisconsin cities and villages adopted zoning ordinances in the early 1920s. In 1923, the state legislature authorized the use of zoning by counties for the regulation of the location of commercial and industrial enterprises in the unincorporated areas, subject to town approval. In 1929, the Legislature expanded rural zoning authority to allow for the management of all rural land uses.

In the rush to adopt zoning ordinances in the 1920s and 1930s, zoning and planning were considered the same. As the pace of land development magnified following World War II, many of the inadequacies of zoning became apparent. Given the complex nature of the community development process, zoning alone was ineffective at managing issues of growth.



Because of its distinct boundaries, zoning separates uses. (Map courtesy of Michael Demaster)

In addition, by its very nature, zoning was used to separate residential, commercial, industrial and institutional land uses. This separation of uses required under zoning promoted dependence on the automobile and a loss of a sense of place.

Nonetheless, zoning remains the most widely accepted land use control. It will continue to be an important tool to carry out plans. Planning, however, is necessary to help mitigate the potentially negative effects of zoning. Zoning needs to be based on goals formulated in a plan that is separate and distinct from the zoning ordinance. Zoning must also be used with other appropriate tools, to help achieve the vision of a community. It is through a plan that the vision is clarified and the various implementation tools such as zoning can be coordinated.

ZONING POWERS: COUNTIES, TOWNS, CITIES AND VILLAGES

There are some distinctions between who is authorized to do general zoning and who is authorized to do special purpose zoning. General zoning addresses a variety of public purposes and objectives. Special purpose zoning addresses specialized concerns or special geographic areas such as lands around airports and lands along rivers or lakes. In Wisconsin, the principal forms of special purpose zoning are agricultural preservation zoning, shoreland zoning, and floodplain zoning.

There is also a distinction between zoning that is mandatory (that is, regulations are required to be adopted locally by a requirement of state law) and zoning that is a matter of local option.

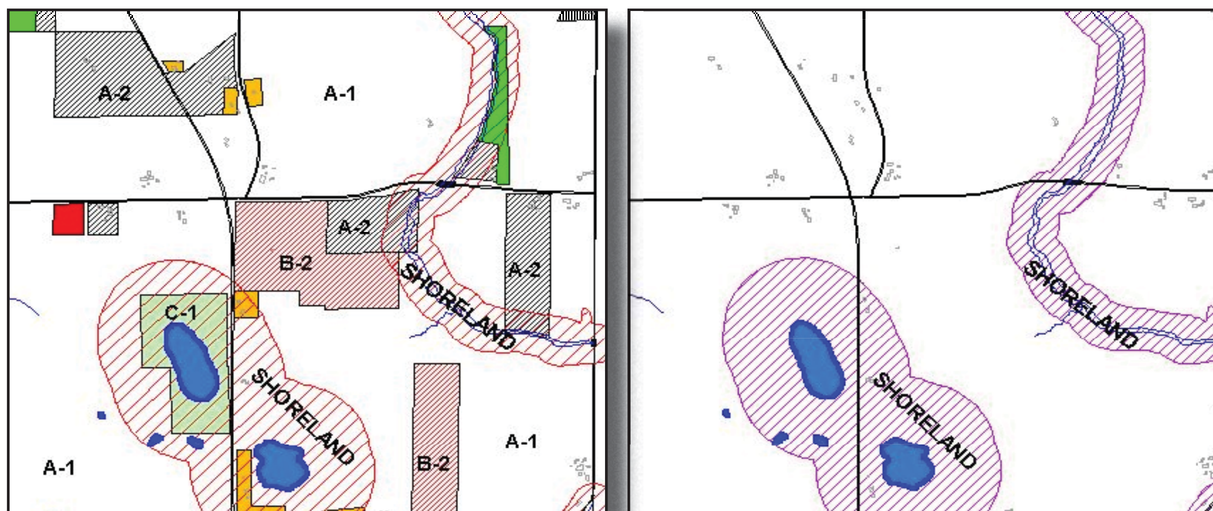
Both zoning and rezoning are considered legislative processes. This means that the courts will often defer to the policy decisions made by local communities concerning zonings and rezonings. Judicial interference is restricted to cases of abuse of discretion, excess of power, or error of law. Local communities therefore have a considerable degree of latitude in drafting zoning ordinances.

Counties

The general zoning authority of counties is limited. General county zoning does not apply to lands inside the limits of incorporated cities and villages. County general zoning can apply to the unincorporated (town) lands in the county only if the town board approves the application of a general county zoning ordinance to land within the town.

In contrast to county general zoning authority, there are different procedures and requirements related to some special types of zoning. For example, state law requires that counties adopt shoreland zoning that is applied to shorelands in towns. Counties must regulate all lands in unincorporated areas within 1000 feet of a lake, pond, or flowage, 300 feet from a river or stream, or to the landward side of a floodplain. The restrictions placed on shorelands are designed to protect navigable waters for fishing, recreation, navigation and scenic beauty. A county ordinance adopted with this statutory mandate need not receive town board approval.

Counties must also adopt floodplain zoning for floodplains where appreciable damage from floods is likely to occur. The geographic scope of county floodplain zoning will be the same as shoreland zoning along a water body that floods. Floodplain zoning has the specific purpose of reducing damage from flooding. County floodplain zoning applies in unincorporated areas and does not require approval of town boards.



Map at left shows county shoreland zoning in town with existing land use zoning. The county's shoreland zoning adds regulations on top of the underlying town land use regulations already in place.

Map at right shows county shoreland zoning in town with no land use zoning.

(Maps courtesy of Kevin Struck)

Finally, counties may adopt special purpose zoning of agricultural lands or of lands within the approach way of a county-owned airport. Airport protection zoning by a county would not require town board approval to go into effect. Exclusive agricultural zoning, however, does require town board ratification.

Towns

Town land may be zoned under town general zoning ordinances. Town zoning applies only to unincorporated lands in the civil town and does not affect lands in cities or villages or in other towns. A town can adopt its own ordinance in two ways:

Town Zoning Where County Zoning Does Not Exist

To adopt a town zoning ordinance under this procedure, the county must not have adopted a general zoning ordinance. A town board wishing to zone can petition the county board to adopt a county ordinance. If, within approximately one year, the county board has not passed such an ordinance, the town board is free to adopt its own ordinance.

Town Zoning Under "Village Powers"

Another procedure for adopting town zoning involves these steps: 1) The town electors pass a resolution at an annual town meeting directing the town board to exercise village powers. 2) The town board then considers and passes a town general zoning ordinance under the procedures available to cities and villages.

Cities and villages
Cities and villages may adopt general zoning within their boundaries. Cities and villages are authorized to adopt ordinances that regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade industry, mining, residence or other purposes if there is no discrimination against temporary structures.

Cities and villages may adopt zoning within the city or village limits without obtaining the consent of other units. Cities and villages may also adopt extraterritorial zoning in town areas beyond city and village boundaries (see page 33).

Zoning ordinances can specify more than lot sizes and setbacks. Regulations can also affect structures on the lot, including their height, bulk, architectural style, landscaping, and parking spaces. (Photo courtesy of Kevin Struck)

City and village zoning law concerning floodplains and airport approaches is similar to county law. Cities must adopt floodplain zoning that applies to floodplain lands within their boundaries where appreciable damage from floods is likely to occur and they may adopt zoning of airport approaches.

DEVELOPING A ZONING ORDINANCE

Ideally, a zoning ordinance rests on the visions, goals and policies of a community-adopted comprehensive plan. Therefore, zoning should be developed during or after a successful planning process has been completed. Most zoning ordinances, however, have been developed without the benefit of a separate planning document.

By January 1, 2010, all zoning ordinances enacted or amended by a town, village, city, or county must be consistent with that local government unit's comprehensive plan. [Wis. Stat. 66.1001(3)] This would imply that a comprehensive plan is a prerequisite to enact or amend a zoning ordinance after January 1, 2010. In the past, a separate comprehensive plan was not required.

The benefit of having prepared a plan is that it provides guidance for the zoning ordinance. Without the plan, developing the zoning ordinance will be more difficult and, once complete, the ordinance may be more vulnerable to attack. As with any planning process, implementation of the ordinance and monitoring its effectiveness is always a critical component. Citizen involvement is also crucial.

Preparing a Draft Ordinance

The plan commission begins by preparing a draft zoning ordinance, often with help from specialized professionals, such as a land use specialist, an attorney, and an administrative assistant. Sometimes, a special project advisory committee is created to develop the ordinance. The special committee may include some of the staff from the community, interested citizens, and/or other interest groups.

The results of a planning process that has defined community objectives will provide guidance for the preparation of a draft zoning ordinance. A zoning ordinance special committee can also make detailed recommendations for the ordinance beyond what may have been generally recommended by a comprehensive plan. Remember, every use that is regulated, every permit that is required, every special exception that is listed creates an administrative burden somewhere down the road.

The Zoning Ordinance Text and Map

The ordinance text and map should be easy to understand and use. Besides a table of contents, an index can be especially helpful. Most modern word processing software will generate an index automatically. The most advanced ordinances also are made available online in hypertext format, which allows readers to move quickly through the document to find definitions and related items.

District boundaries on the map should be precise, careful, and easy to interpret. Wherever possible, district lines should follow recognizable features. Color works much better than black-and-white shading schemes but may be more difficult and expensive to reproduce. Maps should be available for purchase at a reasonable expense.

Finally, maps should be referenced in the text and should be capable of being changed when map amendments are passed. This is most easily accomplished when maps have been drafted on a computer. Digital maps also have the advantage of being reproducible at a variety of scales and sizes.

Administrative Matters

The zoning ordinance should also address several administrative matters. The state statutes do not cover these items in any detail. They must, therefore, be covered in the local ordinance.

- A plan commission must be in place or must be created by local ordinance. The plan commission is responsible for preparing the plan, developing the ordinance, evaluating the performance of the ordinance, developing proposed changes to the ordinance and processing amendment proposals.
- The board of adjustment or appeals must also be created by the ordinance. The ordinance must deal with the composition of the board, procedures for board activities, and should note the process for appealing board decisions.
- The ordinance must define land use activities that require permits, procedures for processing applications for permits and for challenging decisions made during the processing. The ordinance also needs to outline the enforcement process, including penalties and legal consequences.
- The ordinance must set forth the procedures for handling special exceptions or conditional uses. State law is not adequate to articulate procedures for special exceptions.
- The ordinance should set forth procedures for processing amendment proposals. State law explains procedures on amendments in some detail. However, at minimum, a locality will wish to deal with fees for applications.

Community Dialogue on a Draft or Redraft

The Wisconsin Statutes prescribe procedures to be followed when the plan commission has tentatively settled on a draft of a new ordinance. The formal statutory proceedings should not be initiated until the commission is relatively sure that the draft is going to have a reasonable reception. Thus, the commission will usually want to take a preliminary draft out into the

community for discussions and informational presentations, and to circulate it for review and comment. This informal review process may cause the commission to revise the preliminary draft.

When seeking community input on the draft zoning ordinance, it is important to keep in mind that the public and the public's elected representatives will seldom accept a zoning proposal that they do not understand, at least in broad dimensions. Time must be allowed for the story to be told, for the public to absorb the story, and respond, and for more interaction, as necessary.

To push the project on a fixed timetable will be viewed as a "railroad job" and will be resisted regardless of merit. On the other hand, there are equal dangers in going too slow. A new ordinance or revision project that grinds on for many months or even years becomes stale. The effort loses momentum and becomes a target for nitpicking and delays.

Finally, keep in mind that the public wants to know what the zoning says for their lands and their neighborhood. People become frustrated if that question is not answered. Presentation of a zoning text without a map keeps the question from being answered. Presentation of a text and map may still leave questions unanswered if a property is in a district where nearly all land use possibilities are made special exceptions/conditional uses. An attempt to win public support for a zoning ordinance cannot be made in ways that fail to answer the question "What does it mean for my land?"

AMENDING THE ZONING ORDINANCE

A zoning ordinance can be amended by vote of the governing body that enacted the ordinance. The zoning enabling statutes spell out procedures for initiation, review and processing of amendments and for required ratifications. Local ordinances may also have additional requirements. These specifications must be followed to the letter.

General Principles Applicable to Zoning Amendments

A zoning ordinance has two major components: a text and a district map. Each can be amended. Some amendments affect a wide range of uses and lands and a number of applicants and other affected persons. Other amendments affect single parcels and very limited numbers of persons. The first type of amendment is general and the second type is specific.

As with all aspects of land regulation, zoning amendments must be based on the public interest and must be reasonable. Amendments that are specific and appear to affect interests of a small number of persons or a small area of land tend to raise questions about whether they are in the general public interest. "Spot" map amendments commonly present this question. An amendment which is strictly for private benefit is illegal. However, not all spot amendments are necessarily lacking in public benefit.

Zoning amendments that change land use rules can upset landowner investments and development plans that were made in reliance on the former ordinance. Under some circumstances, an amendment can be declared inapplicable to a project that had commenced before the rules were changed, where conformity to the amendment would be a hardship.

There are also other procedures (a variance, or a special exception) that can achieve the same results as a zoning amendment. Choosing which procedure to employ is partly a legal question and partly a question of strategy. For example, an ordinance may specify a 15-foot minimum side yard. It is discovered later that a few number of lots would be better served by a 10-foot side yard because of occasionally occurring topographical conditions. When these conditions are present, the normal 15 foot rule creates a hardship that can be relieved without disruption of the spirit of the ordinance.

In this situation the enacting unit could amend the ordinance to state that side yards can be 10 feet where slopes in the side yard area exceed a certain rate. Conversely, the ordinance can be left unamended and the reductions handled by variances. Either way is legal.

Amendment Procedures: City, Village and Towns Exercising Village Powers

Generally, someone introduces an amendment. The amendment proposal must be received by the council or board and referred to the plan commission. Notices are sent to certain parties. A hearing is held. Following the hearing, the plan commission makes a recommendation and report on the amendment proposal to the governing body. The governing body deliberates on the proposal pursuant to its procedures and votes to adopt, reject, or amend the amendment and then pass or reject it, or re-refer the matter.

While zoning amendments by a city or village do not need to be approved by another unit of government, towns operating under village powers must have amendments approved by the county if the county has a zoning ordinance.

A number of procedures are not specified in the statutes but should be addressed in the local ordinance. For example, the ordinance should identify who can initiate an amendment and the form of the initiating document. The ordinance should also specify procedures for submission of adopted amendment ordinances to the chief executive, recording of action on amendment proposals in municipal records, notice of disposition of amendment proposals to interested parties, and publication of adopted ordinances.

Spot Zoning

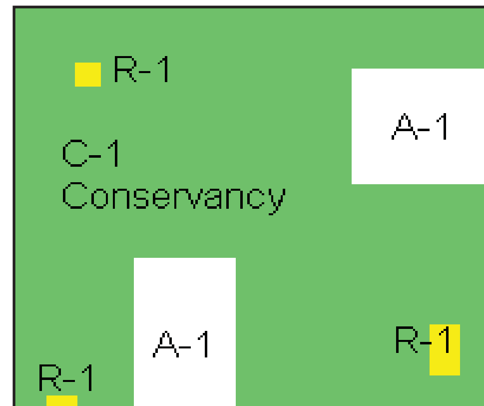
Amending a zoning ordinance to zone a relatively small area for uses significantly different from those allowed in the surrounding area to favor the owner of a particular piece of property is termed “spot zoning.” The Wisconsin Supreme Court has defined spot zoning as a rezoning “whereby a single lot or area is granted privileges which are not granted or extended to other land in the vicinity, in the same use district.”

Spot zoning is not necessarily illegal but must be judged on individual circumstances. To determine whether spot zoning is legal, the courts look at the purpose for which the zoning is granted. Since zoning is a legislative function and carries with it a “presumption of validity,” judicial review is limited to determining whether the rezoning is unconstitutional, unreasonable, or discriminatory. Although a court may differ with the wisdom of the zoning authority in granting a rezoning, it cannot substitute its judgement for that of the local authority.

According to the courts, for a rezoning to be upheld, the spot zoning should be for a public purpose and result in public benefit, not solely for the personal benefit of the property owner requesting the rezoning. One way to

Under these doctrines developed by the courts, it is difficult to prove an illegal spot zoning. One example of the difficulty of proving a spot zoning appears in a 1990 decision of the Wisconsin Court of Appeals. The case involved an area of a town where all the lots were zoned R-1 (residential) or RH-1 (rural homes). A property owner applied to have one parcel in the area rezoned to LC-1 (limited commercial) for the operation of an electrical contracting business. The neighbors challenged the rezoning as a spot zoning.

The Court of Appeals concluded that the rezoning was not an illegal spot zoning. The Court of Appeals agreed with the findings of the trial court that the rezoning was in the public interest and not solely for the benefit of the property owners. According to the trial court, the electrical business provided a public service both to the neighbors and to the entire town.



Why have R-1 residential parcels popped up in an area supposedly designated for open space and farmland preservation? Spot zoning may be the culprit. (Graphic courtesy of Kevin Struck)

show that the spot zoning will result in a public benefit is that the rezoning should be consistent with long-range planning and based on considerations that affect the whole community.

Although it is unlikely that rezonings will be successfully challenged in court as illegal spot zonings, the practice of spot zoning should not be encouraged. If a community finds that it is confronted with numerous requests for spot zonings, the zoning ordinance should be analyzed. Frequent spot zonings usually indicate that the ordinance does not reflect current community needs and requires updating.

Conditional and Contract Zoning

Local zoning authorities sometimes become frustrated by the inflexibility of standard zoning. Situations arise where a community feels that rezoning a parcel for a particular use would benefit the community, but, if the rezoning is granted, other less desirable uses could also be developed under the new zoning district. Officials ask, "Can't we zone for the particular use that this applicant has in mind?"

Frustrations also occur when communities become impressed with the construction plans brought in by a developer seeking a zoning change. While under the influence of these plans and promises, the rezoning is

adopted. Later on, the actual development may turn out substantially different from what was expected. Sometimes development does not take place at all and the land is held for speculation with the new zoning classification in place.

In searching for ways to deal with these circumstances, two devices have evolved that are commonly referred to as "contract zoning" and "conditional zoning." Both attempt to provide guarantees that land being rezoned will be compatible with the surrounding area by imposing special conditions--conditions more precise and more restrictive than those applied to other similarly zoned lands. Controversy about the use of these devices has developed since the state zoning legislation does not mention them. In the absence of any legislative directive, the use of these devices by local units of government is governed by evolving precedents being established by decisions of the Wisconsin Supreme Court.

Contract Zoning

Contract zoning is an agreement between a property owner and a zoning authority that binds the property owner to special restrictions on the use of the property and, in turn, binds the local zoning authority to grant the rezoning.

Contract zoning has been found illegal by the Wisconsin Supreme Court. According to the Court: "A contract made by a zoning authority to zone or rezone or not to zone is illegal and the ordinance is void because a municipality may not surrender its governmental powers and functions or thus inhibit the exercise of its police or legislative powers."

Conditional Zoning

Conditional zoning is the attachment of conditions to a rezoning request that are not otherwise spelled out in the text of the zoning ordinance. The zoning authority makes no promises, but receives a binding agreement from the land owner in exchange for rezoning. The actual agreement is usually a covenant or deed restriction that may be enforced by the local unit of government.

Conditional zoning differs from "true" contract zoning in that the conditions are placed on the property by the

Conditional zoning could persuade a local community to grant a more intense use than otherwise permitted – if certain conditions are met. Such conditions might include providing access to a waterfront, preserving green space, adding extra landscaping or limiting impervious surfaces. (Photo courtesy of Kevin Struck)

landowner in order to convince the local government to pass the rezoning, but the local government does not reciprocate by contracting to pass the rezoning. Since the local government may still ultimately turn down the rezoning request, conditional zoning is legal.

The following guidelines and suggestions should be considered by communities contemplating the use of contract or conditional zoning arrangements:

- The local zoning authority may not be party to a contract binding itself to rezone, although it is permissible for the zoning authority to recognize the conditions and be motivated to rezone because the conditions exist.
- The conditional rezoning must meet the general test of all rezoning promoting the general safety, welfare and health of the community and it must not constitute illegal spot zoning. The special condition attached should be reasonable. To be sure they are reasonable, the special conditions could be based on a community plan. The argument that conditional rezoning disrupts the plan or represents spot zoning will be diminished if similar conditions are called for in the plan.
- The local zoning ordinance should contain a section explaining the intent and form of conditional zoning provisions. If the provisions contain an automatic repealer clause, which provides that the zoning reverts back to the original zoning if the conditions are not met within a set time limit, a specific time limit should be included. Also, if this form is to be used, notice should be given and a public hearing conducted on repeal to avoid a possible challenge on due process grounds. If the form of the provisions is that the zoning becomes effective only upon the conditions being met within a time limit, the time limit should be specified in the ordinance, and definite standards for compliance should be provided.
- Conditional zoning should be used only to deal with particular and unexpected circumstances that arise at the time of rezoning. If a unit of government wants to put conditions on certain uses of land whenever they arise, other methods which permit application of conditions are available, such as special exceptions and conditional uses.

The Comprehensive Revision Amendment
A community may decide that its present zoning ordinance is seriously out of date and needs wholesale revamping. One way to accomplish this is to draft a new ordinance and enact it as a replacement for the old, outdated code. The old ordinance is repealed; the new ordinance replaces the old.

Under city and village law (and for towns exercising village powers), the statutes authorize repeal and reenactment of "an entire district plan and all zoning regulations" in accord with procedures for enacting new zoning ordinances. Repeal and reenactment of parts of a district plan and regulations will be handled procedurally under amendment procedures.
For towns exercising general town zoning authority, the statutes provide that towns may by a single ordinance comprehensively revise an existing town zoning ordinance following the procedures for the adoption of a zoning ordinance. The statutes define "comprehensively revise" as incorporating "numerous and substantial changes."

VARIATIONS OF TRADITIONAL ZONING

Zoning was established during an era when the primary purpose of land use regulation was separating residential from commercial and industrial activities. This segregation of uses became known as Euclidian zoning after a U.S. Supreme Court case in which its validity was upheld.

Over the years the factors affecting land use have changed. Advances in transportation and communication, the migration of people and industry from urban centers to suburban and rural locations, changes in lifestyles and living arrangements, and the changing demands for natural resources present a challenge to traditional Euclidean zoning techniques.

Despite these changes, zoning has remained the most widely used land use regulatory tool. Rather than overhauling the entire zoning concept, planners and lawyers have developed new regulatory techniques within the framework of traditional zoning. These tools have several common characteristics. First, flexible zoning arrangements are generally not keyed to specific districts on the zoning map. The arrangements can usually be applied throughout the locality. A second characteristic is that flexible zoning techniques tailor rules to specific sites and often allow mixtures of uses and/or densities.

Depending on the particular technique, flexible zoning proposals are processed either through amendments or through special exceptions/conditional use procedures. Each time a permit application for one of these use types is received, a certain amount of discretionary decision-making is required.

(Photo courtesy of Kevin Struck)

The discretionary aspect of flexible zoning techniques is an important matter. The trend to incorporate more discretionary decision-making into zoning means that the community is granting final development permission in response to particular applications, without prescribing detailed standards

in advance. Flexible zoning tools entail negotiation between the developer and the administering agency to tailor development proposals to community needs. Professional staff, the local plan commission, and the governing body all become involved in the evaluation/negotiation process.

It is desirable for discretionary zoning devices to be supported by a plan. Otherwise decisions may be inconsistent and arbitrary. Consistent decision making is made easier by the existence of a plan which articulates the policy base of the community. In addition, courts are likely to give more credence to discretionary decisions that bear a direct relationship to stated community goals and objectives.

Planned Unit Developments

Planned unit development (PUD) is both a type of development and a regulatory process. A PUD is planned and built as a unit within which a variety of compatible land uses may be developed at varying densities and subject to more flexible setback, design, and open space requirements than afforded by traditional zoning. Flexibility in site design allows PUD buildings to be clustered, which can bring about savings in energy, service costs to the municipality, and construction costs to the homeowner.

It promotes mixtures of housing types and densities to achieve maximum potential from a site suited to residential purposes, allows housing to be combined with complementing uses such as schools and neighborhood shopping centers, and allows better design and arrangement of open space. By encouraging clustering of houses and other construction, as much as a third of the land may be preserved, thus allowing retention of more natural features.

How can all this flexibility be built into the zoning process without destroying the credibility of the ordinance and its application to more traditional development types? The answer to this question lies partly within the regulatory process involved in attaining permission to develop a PUD and partly within the PUD standards which the ordinance must establish.

The Regulatory Process

Cities, villages, and towns exercising zoning authority under village powers have the authority under Wisconsin law to establish "planned development districts"

(Photo courtesy of Kevin Struck)

that are identical to PUDs. County zoning ordinances can also establish PUDs.

According to the statutes for cities, villages, and towns with village powers, planned development districts are special districts:

"with regulations in each, which…will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and insure adequate standards of construction and planning."

The statutes provide that cities, villages and towns exercising zoning under village powers can only establish PUDs with the consent of the property owners. The law also specifies that the regulations governing each district do not have to be uniform. This is contrary to the requirements of traditional zoning which require uniform regulations within the districts. The specific regulatory framework will be outlined in local ordinances.

Permission to build a PUD is often obtained by a special permit similar to a conditional use permit. As a conditional use, it requires approval by the governing body, the plan commission or the board of appeals, depending on the ordinance. PUDs should be listed in the ordinance as a conditional use allowable in certain zoning districts. A potential PUD developer would consult the zoning ordinance text and then determine from the zoning map where PUDs might be located. The placement of the PUD must also comport with the zoning restrictions of the designated districts. In such cases, no zoning (map) amendment would be necessary, although the governing body might wish to retain final approval authority. In other communities, approval of a PUD may require rezoning the land (into a PUD district).

Virtually all PUD regulations involve some kind of site plan review. In fact, it is the element of the application process which distinguishes PUDs from conventional developments. It is here that development flexibility, negotiation, and discretionary application of standards come into play.

It is also in site plan review that special care must be taken to insure fairness in the decision-making process. Care must be taken to involve developers, public officials and the general public in the PUD process and to assure that all receive a fair opportunity to participate in the process without abusing the interests of others. Time is critical because it means money to both the developer and the public. Therefore the review process should be efficient and complex procedures or excessive steps avoided. The

PUD ordinance should clearly spell out the review process, including the appropriate roles for various public and private parties, and should include procedural guidelines.

The most important characteristic of the PUD review process is negotiation between the public and the developer. Negotiation takes place at three key points: the pre-application conference, review of the preliminary development plan, and final development plan approval.

At the pre-application conference, the developer consults with members of the planning staff and heads of departments to resolve any questions regarding ordinance interpretation, clarify steps, etc. The developer will also want to obtain staff views on what the decision making body is likely to approve. This is an important step in the site review process and can save considerable time later. Local governments should make the pre-application conference a requirement of PUD regulations.

The preliminary development plan negotiations are the most crucial to the whole PUD process. These negotiations result in final agreement between the developer and the planning staff. They should also permit the public to express its views at a public hearing and may result in the granting of any necessary zoning change.

The preliminary development plan is submitted within a certain time following formal application for a PUD approval. It includes specific documents and maps giving a legal description of the project, a detailed site plan and supporting maps. The plan commission holds a public hearing within a specified time period after submission. At this hearing the developer presents the PUD proposal and the planning recommendations are made available for public review.

Following the hearing, the commission may approve, approve with conditions, or disapprove the PUD application. If approved, and if a rezoning is required according to the particular ordinance, the application and supporting documents are sent to the governing body for final action.

The final development plan represents the detailed engineering drawings of the site. This is the formalization of the preliminary plans and should involve negotiations only on details of project execution. The plan commission would, at this time, approve recording the plat.

A local PUD ordinance should make provisions for possible amendments to the final development plan since unforeseen conditions might necessitate altering the plan at some point after approval. Provision should also be made to assure that the developer carries out the approved plan.

Standards

Despite the flexibility of the PUD process, standards are needed to protect public health and safety and to assure design quality and conformance to an overall plan. Examples of standards or criteria to be included in PUD regulations are:

- Developer provision of land and capital improvements for public uses.
- Dimensions and grading of parcels and a ceiling on the total number of structures permitted in the development.
- Permissible combinations of development (specifying compatible uses).
- Population density limits.
- The extent and location of open space.
- Methods to be employed to control further subdivision or use changes.
- Scheduling of development.
- Preservation of architectural, scenic, historic, or natural features of the area.

Besides these standards, additional guidance for this discretionary zoning process should be provided by the community's plan. The plan provides the overall context within which the proposed development needs to fit.

Floating Zones

In content, a floating zone is the same as a conventional zone. It describes the permitted uses, setback requirements, and other standards to be applied in the district. Unlike conventional zoning districts, however, the floating zone is not designated on the zoning map. Once enacted into law it "floats" over the community until, upon approval of an application, it is "brought down to earth" to be affixed to a particular parcel through an amendment to the zoning map.

The floating zone is particularly useful in situations where a community wishes to permit a limited number of specific uses (large shopping centers, for example) but does not wish to map their locations in advance. It also allows for locating use types which cannot be anticipated but which the plan would like to provide for. For instance, a community may have a anti-industry policy and no industrial zone in its local ordinance. It may, however, be amenable to a high technology, low-impact industry under certain conditions. The floating zone allows this kind of control and flexibility.

The legal status of floating zones tends to be based not on the concept as such, but on the conditions under which floating zones can be used by developers. Because they are often used to permit more intensive

development of a site in a less intensive, conventionally zoned area (for example, multi-family housing in a area zoned single family), the granting of a floating zone permit may be challenged as a spot zoning. Floating zone conditions specified in the text of the ordinance should therefore address the public interest and set forth standards to insure conformance with good land use planning principles.

The procedure for legislative approval of floating zones is similar to that of conventional rezonings. The major distinction is in the determination of the appropriateness in the change in use classifications. With a floating zone application, the question is not whether the existing zoning is reasonable, but whether the conditions specified for granting the rezoning have been met. This is determined through a site plan review process similar to that for PUDs. The floating zone permit should be denied if the developer fails to show that the specified conditions would be met.

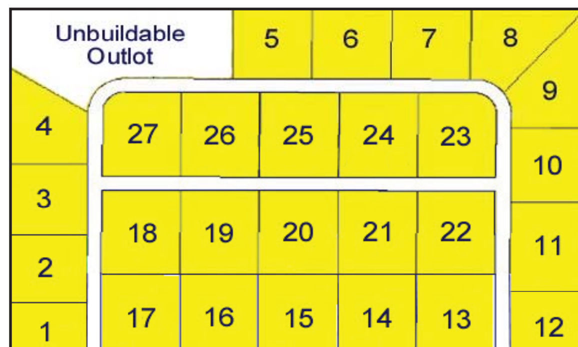
The text of the zoning ordinance should establish clear standards for floating zone approval. This protects the legislative body from challenges of invalid spot zoning and, to some degree, reassures landowners who may feel that floating zones take away the "protection" afforded them by traditional zoning districts.

Standards can also aid in refuting claims that floating zones violate comprehensive planning requirements. Such claims cannot be substantiated where the ordinance describes the purpose and criteria for establishing floating zones, explicitly identifying the types of permitted development and listing the conditions placed on that development.

Performance Zoning

Performance zoning uses performance standards to regulate development. Performance standards are zoning controls that regulate the effects or impacts of a proposed development or activity on the community, instead of separating uses into various zones. The standards often relate to a site's development capability. In agricultural areas, for example, performance zoning could be used to limit development on prime agricultural soils and allow development on lower quality soils.

Performance zoning is closely tied to the planning process because the local government must identify planning goals and then write regulations that specifically achieve those goals. Performance zoning is often used in industrial zoning to control impacts such as noise, odors, smoke and other side effects from industrial activity.



Conventional, 5-acre density development on a 100-acre property produces 22 lots and leaves 20 acres of woodlands / farmland.

Clustered layout on 100-acre property produces up to 27 1/3-acre lots (if density bonus allowed) and preserves 80 acres of woodlands / farmland.

(Graphics courtesy of Kevin Struck)

Cluster (or Average Density) Zoning

Cluster development can be used in suburban and developing rural areas to protect environmentally sensitive features or provide large open space areas. Dwellings are grouped on the most buildable portion of a development site with the remainder of the site preserved as open space. Smaller building lots are permitted with the lots grouped closer together. However, the total number of buildings allowed on the site cannot exceed the number otherwise permitted by the zoning district.

Bonus and Incentive Zoning

Bonus and incentive zoning allows local government to grant a bonus, usually in the form of density or the size of the development, in exchange for amenities (such as increased open space, pedestrian paths) or a higher quality of required provisions (enhanced stormwater management facilities, landscaping) provided by the developer not required by traditional zoning. Density bonuses may be offered to encourage cluster development. In many instances, the use of bonus and incentive zoning is tied to a site plan approval process.

Overlay Zoning

Overlay zones are designed to protect important resources and sensitive areas. Wisconsin's mandated shoreland, floodplain, and wetland zoning programs are examples of overlay zoning (see page ? for an example).

The requirements of overlay zoning apply in addition to the underlying zoning regulations. The underlying zoning regulates the type of uses permitted, such as residential or commercial, while the overlay zone imposes specific requirements to provide additional protection for the sensitive features.

Mixed Use Zoning

Mixed use zoning is an effective way to enhance existing urban and suburban areas and encourage infill development. Older commercial areas within communities, for example, often include an existing mixture of uses – residential, commercial, public, etc. Mixed use zoning recognizes the existing mixture and encourages its continuance and may offer an alternative to trying to wrestle with potential nonconforming use complexities.

Inclusionary Zoning

Inclusionary zoning provides incentives to developers to provide affordable housing as part of a proposed development project. The incentive usually is a density bonus that allows the developer to build at higher densities than would normally be allowed. In exchange for the higher density, the developer must build a specified number of low and moderate income dwelling units.

ADMINISTERING A ZONING PROGRAM

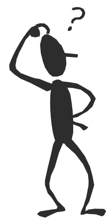
Structure for Administration
Following the structure of the 1920s Standard State Zoning Enabling Act, responsibility for administering the local zoning ordinance under the Wisconsin Statutes is divided among three agencies: the local legislative body, the plan commission, and the board of appeals/adjustment.

Zoning and other land use ordinances are passed by the local legislative body under authorization (or direction, in the case of mandatory codes) provided by the state legislature. This indicates that the state and the local legislative bodies are part of the administrative structure of code work.

The local legislative body, acting within bounds created by state law, passes and amends ordinances, appropriates funds and creates positions for other administrative actors, and oversees the whole process of ordinance work.

The plan commission has these zoning functions: to advise the local legislative body on development of ordinances and on amendments; to oversee the planning and zoning staff; to hold certain hearings; to plan; and, where specifically assigned this zoning function, to pass on special exceptions or conditional uses.

The board of appeals/adjustment has two mandatory functions in zoning and one other optional, but still important, function. The two mandatory functions are to handle variances and to handle administrative appeals. The optional function is to handle special exceptions or conditional uses.



What If? (Real-world Puzzlers)

What if the local official responsible for issuing zoning permits makes a mistake and issues a permit for a use or a dimensional situation that really does not comply with the ordinance?

Answer: A mistakenly issued permit can be revoked when the mistake is discovered.

What if several permits are needed to do what the applicant wants?
Answer: The zoning for the parcel is okay and a permit can be issued consistent with the zoning ordinance. But what if there is a question regarding whether the parcel was subdivided properly, or whether a sanitary permit has been issued or needs to be issued now for septic facilities?

The answers depend entirely on the local ordinances. The local ordinances have to say in what order permits are issued and whether one permit can be held up until another permit is issued, and whether one permit is conditional on issuance of another permit.

What if the zoning official has trouble interpreting the ordinance?

Answer: Take the garage example. The code said "garage." On what basis did the official know whether "garage" meant a big truck repair building? To be fair and proper, and to have interpretive decisions stand up on appeal, the decisions should be based on words in the code and on the intent of the code.
Does the code modify the word "garage"? Does it say "automobile garage" or garages "ordinarily and customarily found in residential areas?" Does the ordinance, as a whole or in the particular district, have a statement of intent? Does that statement have any bearing on the garage issue? Can an intent be read into the rules of the district even if there is no statement of intent?
The district may be very strict. No commercial or industrial activities at all are allowed. This suggests an intent to shape a district of purely residential character and gives a possible basis for denying a commercial use.
Does the ordinance, in some other district, provide for truck storage and repair garages? Does this show an intent to place the use in the highway commercial zone and, by implication, not in the residential zone?

What if a property owner and the zoning official disagree on an interpretation of the zoning ordinance?

Answer: For example, the ordinance says garages are permitted on residential lots as an accessory to a house. The applicant applies to build a 5-stall garage big enough to store and repair semi-tractors. The zoning official interprets the term "garage" as including ordinary household car garages and not big truck garages and turns down the application.
What happens? First, the zoning official has done his or her job, which is to interpret the ordinance and make decisions. If the applicant simply goes ahead and builds the garage in the face of the permit denial, the county can prosecute and the owner's position in court will be weak because the owner acted in defiance of the permit decision (as well as in opposition to the ordinance) without pursuing the several routes to legal relief. However, the applicant has several ways to appeal the denial. The applicant can petition the board of adjustment/appeals for an appeal of the decision. The board must hold a hearing, review the decision and make its own decision whether or not the ordinance allows the sort of garage the applicant wants.
This decision will then become the official decision superseding (or upholding) the zoning official's decision. Another appeal option is to challenge the decision in court. A final option is for the applicant to petition the county board to amend the ordinance to add truck garages specifically to the use list for the residential district. If such an amendment were passed, the applicant could apply again and get the permit.

CONDITIONAL USES

A conditional use allows a property owner to put property to a use which the ordinance expressly permits if certain conditions specified in the zoning ordinance are met. Courts have interpreted special exceptions, special uses, and conditional uses as synonymous.

Conditional uses are certain land use types that are of such a special nature and the impacts of which are so dependent on specific circumstances that determination in advance of where and when they should be permitted is impractical. The authority to grant conditional uses may be exercised by the governing body of the community or it may be delegated to the plan commission or the board of adjustment/appeals.

To be considered a conditional use, the use must be listed as such in the zoning ordinance, along with the standards and conditions which it must meet. The conditions are provided to protect adjacent landowners, to handle troublesome uses and to attempt to protect the character of the surrounding area. The approving body cannot legally allow a conditional use if the conditions listed in the ordinance or required by the board do not exist or cannot be met. The applicant for a conditional use has the burden of showing why the conditional use should be approved.

The approving body has several options when making its determination on applications for conditional use permits. It may either reject the application entirely, approve the application in full or partially, or approve the application subject to conditions. Additional conditions imposed by the approving body might include the time period in which all or part of the use may be permitted, increased setback and yard dimensions, construction sureties, deed restrictions, etc.

ADJUSTING THE CODE

In the "What If?" section, it was assumed the zoning ordinance was relatively specific and precise in setting rules regarding the use intended by a hypothetical property owner. Let's assume now that the rules that apply are either 1) unclear, and therefore need to be adjusted to be more specific, or 2) are unsatisfactory – that is, while clear, they produce a statement that doesn't make sense, at least to the property owner, who thinks the community might alter the rules if such a request were made.

Either situation – unclear rules or unsatisfactory rules – gives rise to a request to adjust the rules. Adjustments to the code can be accomplished by variance or rezoning, or through an administrative appeal.

Rezoning
Rezonings are formal changes in the text or map of the zoning ordinance. They can be site-specific or they can be general or community-wide in effect. The process of rezoning occurs through an amendment to the zoning ordinance. When zoning requirements impose an undue hardship for all properties within a neighborhood, it is more appropriate to seek a rezoning for that area rather than petitioning for a variance.

Variances
A variance authorizes the use or development of a specific site in a manner that is prohibited by the zoning ordinance. To obtain a variance, a property owner must show unique, localized physical problems that give rise to hardship that can be overcome by varying the application of the ordinance without harming the purpose and intent of the ordinance.

The variance procedure allows the impact of general rules to be varied in response to unusual local circumstances without involving the governing body in amendment procedures for each such localized situation. Variances are decided by the board of adjustment/appeals.

NONCONFORMITIES

The original purpose behind zoning was to divide a community into districts, each of which was characterized by one particular type of land use. The communities on which zoning was superimposed, however, had not followed a neat arrangement of development. Uses were in fact mixed – stores were located in residential areas, junkyards in commercial districts, etc.

(Photo courtesy of Kevin Struck)

Since the purpose of zoning was to insure that all uses in a particular district were similar to each other, existing dissimilar uses detracted from that purpose, thus undermining the justification for zoning. It therefore became important for the proponents of zoning to get rid of these "nonconforming" uses. Zoning proponents suggested an approach whereby land uses that were inconsistent with zoning regulations would be allowed to continue, but they would be subject to restrictions that would limit their expansion and cause them to disappear gradually.

The decisions of the Wisconsin courts reflect the historic aversion to nonconforming uses. According to the courts, "[t]he law seeks to restrict rather than increase nonconforming uses and to eliminate such uses as speedily as possible." However, in many cases, the rationale behind the development of the original concept of nonconforming uses no longer is valid. There is no longer a widespread belief among planners that a mixture of uses is necessarily bad.

(Photo courtesy of Kevin Struck)

Statutory Definitions
Nonconforming uses have certain legal protections afforded directly by the Wisconsin Statutes. The statutes prohibit local zoning ordinances from eliminating certain nonconforming uses. Over time, three general concepts of nonconformity have developed:

- nonconforming uses
- nonconforming structures
- nonconforming lots

The general zoning enabling statutes only address nonconforming uses.

Nonconforming use
This is the most commonly used term. It relates to a use not permitted by the zoning ordinance and reflects the original concept of nonconforming use developed in the 1920s. The statutes define nonconforming uses as follows:

City and villages: *"The lawful use of a building or premises, existing at the time of the adoption or amendment of a zoning ordinance, although such use does not conform to the provisions of the ordinance."* Note that this refers to uses of land (premises) and of buildings, that the use must have existed before the new ordinance or amendment, and that the immunity seems to extend to any provisions of the ordinance. The right is to continue the lawful use.

Towns: *"[T]he continued use of any building or premises for any trade or industry for which the building or premise is used when the ordinance takes effect."*

Nonconforming Structure
A nonconforming structure is fairly common. It involves a building or other structure, lawfully existing at the time of the passage of a zoning ordinance, that does not comply with the dimensional requirements of the new ordinance for such things as lot coverage, height, or yard requirements applicable to new structures within the same zoning district.

Nonconforming Lot
Nonconforming lots involve a legally recorded lot that existed at the time of the passage of a zoning ordinance but fails to meet square footage or other spatial requirements for the zoning district within which it is located.

Statutory Limitation on Extensions, Expansions, or Alterations
While the statutes allow certain nonconforming uses to continue, the statutes place limits on the ability of a property owner to expand, alter, and reconstruct nonconforming uses.

Cities and villages: "*Such nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 per cent of the assessed value of the building unless permanently changed to a conforming use.*"

Towns: "*[A zoning ordinance] may prohibit the alteration of, or addition to, any existing building or structure used to carry on an otherwise prohibited trade or industry within the district.*"

The 50% rule has led to several practical difficulties in its application. One issue relates to what is meant by "structural repairs." Often local communities may include a definition of "structural repairs" in their zoning ordinances. This means that nonconforming use issues need to be resolved within the context of the exact wording of the local ordinance.

Another issue is the problems associated with the use of the term "assessed value." Assessed value is rarely an accurate measure of fair market value. Obviously, different values will affect the amount of repairs that can be done to a structure.

Enlargements or extensions of a nonconforming use cannot change the use of the property. However, the mere increase in the volume, intensity or frequency of a nonconforming use is not sufficient to prove an impermissible expansion of a nonconforming use. For example, an increase in business activity for a business that is a valid nonconforming use is not prohibited. Rather, proof of structural alterations or repairs in violation of any statute or ordinance are required to prove the impermissible expansion of a nonconforming use.

The penalty for illegally expanding a nonconforming use is severe. An illegal expansion or enlargement of a nonconforming use takes away the legal nonconforming use status (as well as the illegal change).

Discontinuance of Nonconforming Uses
The zoning enabling statutes for cities and villages (and towns with village powers), counties, and towns all provide that if a nonconforming use is discontinued for a period of 12 months, any future use of the building and premises must conform to the zoning ordinance.

The use must have been active and not sporadic. The use must be more than accessory or incidental to the principal use, although the nonconforming use need not have been the most substantial use. Legal nonconforming uses run with the land and not the owner. Sale of a nonconforming use does not result in discontinuance of the nonconforming use.

(Photo courtesy of Kevin Struck)

If a community wants to eliminate troublesome nonconforming uses, it can also explore using the power of eminent domain to take property for public use by paying for the property, or it may consider bringing a nuisance action. Long before the concept of zoning, courts upheld regulations requiring the immediate discontinuance of uses and structures which had adverse affects upon public health, safety or morals as a nuisance.

Zoning did not replace nuisance law. Nuisance law still provides a viable alternative for dealing with unwanted land uses such as junk yards, automobile wrecking yards, billboards, etc. which often are the least susceptible to the discontinuance and 50 percent rules of the nonconforming use statutes.

In addition, while preexisting nonconforming uses are protected from zoning ordinances, they are generally not granted immunity from ordinances enacted under other statutory provisions and police power regulations governing the manner or operation of use. For example, a quarry may have the protected status of a nonconforming use but it can still be subject to licensing or special permit requirements.

Enforcing the Code

The methods used for enforcement should be specified in the community's zoning ordinance. One way to enforce the ordinance is to refuse to issue building or occupancy permits where the use of land fails to comply with the ordinance. Other measures should be based on a course of progressive enforcement which ultimately could result in a court action to recover forfeitures or by seeking an injunction to force compliance with the zoning ordinance.

Citizen Enforcement Actions

A neighboring property owner or other aggrieved person can also initiate proceedings to enforce a zoning ordinance. Any person aggrieved by a decision by an administrative official can appeal that decision to the board of appeals or board of adjustment. Any person aggrieved by a decision of the

board of appeals or board of adjustment, or any taxpayer in the community, may also seek judicial review of the decision. In addition, any person specially damaged by a violation can also seek to enforce a zoning ordinance by initiating an action in the courts for injunctive relief.

EXTRATERRITORIAL ZONING (ETZ)

What is it?
Cities and villages have been given by statute (Ch. 62.23(7a)) either a 3-mile (if pop. 10,000 or more) or a 1.5-mile extent of zoning control outside their corporate boundaries if the proper cooperative steps with the adjoining town are followed. This allows a city/village to exercise land use control over new development that otherwise might be incompatible with a city/village's future growth.

What is the broad administrative process to initiate ETZ? A city/village must first have an existing zoning ordinance. Before the existing ordinance can be extended into the extraterritorial area, the city/village must describe by an adopted resolution the area to be zoned and its intent to expand its ordinance, publish the resolution within 15 days, and mail a certified copy of the resolution and map to any affected town clerks and the county clerk.

Development on the urban fringe is sometimes not compatible with a city or village's envisioned growth and design standards. (Photo courtesy of Kevin Struck)

The city/village then enacts an interim zoning ordinance "freezing" existing zoning in all or part of the ETZ jurisdiction. The city/village plan commission updates its existing ordinance to include parcels in the ETZ and a Joint Extraterritorial Zoning Committee (3 city/village members and 3 town members) is created to vote on the update. If a majority of the Joint Committee votes in favor of the proposed regulations, a public hearing is held, after which the city/village council/board may adopt the new regulations. Administrative and enforcement roles for the ETZ may be negotiated between the city/village and the town.

Can a city or village "freeze" the town's local zoning?
Yes, but only within a specified portion of the ETZ. Referred to as an interim zoning ordinance, a "freeze" may be enacted for up to two years, without town, county or state approval – though an adopted resolution, publication, and certified mail notices are still required.

The real purpose is to give the city/village plan commission time to revise its zoning ordinance within the proposed extraterritorial zoning area. Since this action prevents a town from making any zoning changes within the ETZ

while the freeze is in effect, it is recommended that a city/village consult with the town before taking this step.

Must a town agree to ETZ?

The Joint Extraterritorial Zoning Committee consists of 3 city/village members and 3 town members. The final adopted city/village zoning ordinance for the extraterritorial area must be approved by a majority of the members. Actual zoning classifications and decisions are impossible without at least one town vote. Consequently, imposing an ETZ freeze on a town is rarely successful in the long-term, since such an action usually puts the town in a defensive posture – which is unlikely to foster cooperation.

Does a city/village's ETZ replace or overlay (add on to) the existing town zoning?

The statutes do not stipulate one or the other, so either would seem to be allowable.

What are some of the benefits of ETZ?

- Provides for smoother transitions between rural and urban land uses.
- Reduces conflicting land uses, which lessens citizen complaints and protects property values.
- Promotes intergovernmental cooperation and communication – but only if ETZ is enacted after mutual discussion and agreement.
- Makes planning for roads, utilities, recreation facilities, etc. easier.
- Coordinates mutual protection of sensitive areas and natural resources.

[*Sources for section on extraterritorial zoning jurisdiction: Wisconsin Department of Administration – Office of Land Information Services; "Using Extraterritorial Zoning to Protect a Municipality's Interests Outside its Boundaries: A Case Study" by Attorney John Laun; "County & Local Government Land Use Planning & Regulation" by James Schneider, J.D. Compiled by Kevin Struck, Growth Management Educator, University of Wisconsin-Extension*]

Larraine McNamara-McGraw
2633 North Hackett Avenue
Milwaukee, WI 53211
lmacmac@mac.com

September 12, 2022

VIA EMAIL to the members of the Zoning, Neighborhoods and Development Committee Of the Milwaukee Common Council:
Ald. Michael Murphy, Chair: (mmurph@milwaukee.gov)
Ald. Robert Bauman, Vice Chair: (rjbauma@milwaukee.gov)
Ald. Marina Dimitrijevic: (Marina@milwaukee.gov)
Ald. Jose Perez: (jperez@milwaukee.gov)
Ald. Russell Stamper: (Russell.Stamper@milwaukee.gov)

Dear Committee Members:

I write as a property owner at the St. Regis Condominiums, a seven unit, 110 year old building directly across from the two developments whose applications are before you requesting a Zoning change from RM3 to RM6. I am posing some of the questions of importance to us, the neighboring property owners; questions which have been asked by us, and not yet answered:

1. Do we need a zoning change at all?
2. Can't we get all the promised benefits without changing the zoning all the way from RM3 to RM-6, which will utterly destroy the neighborhood that the zoning code specifically states it is designed to preserve and protect?
3. Why not do this via the variance route instead of via an extreme zoning change?
4. St. Mark's is seeking a zoning change instead of a variance because they know that such a radical variance would be subject to a much higher level of scrutiny and likely would not pass muster.
5. The inability of this project to secure a variance rather than a spot zoning change is a red flag that should give you, the committee, and the entire Common Council, caution and pause. If the project can't get a variance, that's a signal that the project may not be a good fit for the particular site in the particular neighborhood into which they are trying to shoehorn it. If this were an RM-5 neighborhood, then maybe an RM-6 change would be OK or reasonable. Here, however, ramming an RM-6 building into an RM-3 block that simply cannot absorb the traffic, safety, and parking demands of such a gargantuan project is imprudent, unreasonable, and violative of the principles enshrined in the zoning code. Changing the zoning to accommodate a project that couldn't even get a variance calls into question whether we should even have a zoning code anymore if the city is so quick to ignore the foundational purpose of the zoning code: to preserve and protect neighborhoods.
6. Is this RM6 zoning change an effort to preserve and protect our neighborhood or is it an effort to monetize an available piece of property for the highest possible benefit of the church and the developer?

7. Is this RM6 Zoning request is meant to preserve and protect our neighborhoods, why was this plan developed in secret by St Mark's hierarchy and the developer over several years and only partially divulged to the neighborhood just two months ago?
8. Wouldn't doubling the zoning density to RM-4 be enough to preserve the neighborhood, protect the existing residents, provide the city with the public benefits it is seeking, give the Downer businesses more foot traffic, give the church lots of money in sale proceeds to use as they wish (for a new annex or anything else), and give the developer the opportunity to profit from building *twice as many* units as are allowed under the long-term development standards of the zoning code?

Kevin Struk has written in his Zoning treatise:

Community Dialogue on a Draft or Redraft

The Wisconsin Statutes prescribe procedures to be followed when the plan commission has tentatively settled on a draft of a new ordinance. The formal statutory proceedings should not be initiated until the commission is relatively sure that the draft is going to have a reasonable reception. Thus, the commission will usually want to take a preliminary draft out into the community for discussions and informational presentations, and to circulate it for review and comment. This informal review process may cause the commission to revise the preliminary draft.

When seeking community input on the draft zoning ordinance, it is important to keep in mind that the public and the public's elected representatives will seldom accept a zoning proposal that they do not understand, at least in broad dimensions. Time must be allowed for the story to be told, for the public to absorb the story, and respond, and for more interaction, as necessary.[1]

Yet, as many of us who are to be directly affected have already pointed out, the "public process" here has been a sham. The first public hearing was at Historic Preservation Commission on July 11, 2022.[2] There, members of the public who spoke in opposition were not only restricted to "one minute" comments, they were rudely cut off if their comments exceeded this time limit imposed only on the opposition. Also, the affected neighbors have come forward out of a sense of civic duty and pride in our neighborhood. We have posed serious questions about the proposed excessive size and the over building of "market rate" apartments in segregated Milwaukee. As Joan Strykowski says in her letter to you:
Why isn't Milwaukee planning for the kind of housing we really need? [3] And, as Janet Thot-Thompson rightfully said: **These upscale high rent apartments do not provide affordable housing or ownership opportunities that may be a step in mitigating generational minority economic inequality.**

[1] Zoning, Kevin Struk, University of Wisconsin Extension, pp.8-9. Copy attached to this letter.
[2] The "public meeting" claimed to have been held by the church and the developer was entirely on Zoom and "public comment" was severely restricted. See, eg, Janet Thot's letter to this committee of September 11, 2022.
[3] See Joan Strykowski's letter of September 11, 2022, attached hereto

It seems Milwaukee once again lacks vision at this very moment when it could work with a church, a powerful developer and our community to deliver something we really need: an end to the strident segregation in our supposedly “most desirable neighborhood,” by building affordable units on this spot. Instead, it is tending in favor of the delusion that this development will help our tax base. This development as planned is more of a lost opportunity for all of us that it is a gain for St Mark’s and Mr DeMichele.

I respectfully request that you consider the questions posed above and exercise your powers of discernment and discretion to seek to answer them.

I would like to speak at the meeting on Tuesday, September 13, 2022.

Thank you for your time and attention.

Respectfully submitted,

Larraine McNamara-McGraw,
Former Alderperson of the Third District

Attached: “Zoning” by Kevin Struk, UW Extension
Letter of Janet Thot-Thompson
Letter of Joan Strykowski
C: Chris Lee(clee@milwaukee.gov)

Sunday, September 11, 2022

Alderman Murphy, Chair: mmurph@milwaukee.gov
Alderman Bauman, Vice Chair: rjbauma@milwaukee.gov
Alderman Dimitrijevic, Member: Marina@milwaukee.gov
Alderman Perez, Member: jperez@milwaukee.gov
Alderman Stamper, Member: Russell.Stamper@vmilwaukee.gov

Subject: Opposition to Current Plan for St. Marks Episcopal Church Property on N. Hackett Ave.

Dear Alderman Murphy, Bauman, Dimitrijevic, Perez, and Stamper,

I agree with the condominium owners group, KEEP OUR NEIGHBORHOOD'S AESTHETICS (https://www.konahackett com), who submitted a document outlining concerns to the zoning board on 9/7/2022.

MILWAUKEE PUBLIC MEETINGS NEED PROCESS IMPROVEMENTS

We need a more democratic system of public participation earlier in the processes, not when it is already decided.

I am concerned about the untimely and insufficient inclusion in public meetings of those most affected by this commercial building.

We were out of state and received 1 day's notice of the developers June 13, 2022"public"meeting, which was a zoom virtual meeting that was dominated by the developer and the architect touting their credentials.

They did not allow enough time for questions or comments nor did they provide their power point presentation prior to the meeting so we could have a substantive understanding. This was their only “public meeting“ to showcase their design that they conducted with those affected. I tried to participate with my questions but was denied because they were out of time and would not wait.

Next I attended the City of Milwaukee public meeting virtually on August 22, 2022. It was a very long meeting 5+ hours that should have been rescheduled. What is the rush? Again, I was denied to ask my questions, although I repeatedly raised my hand virtually and my name was mentioned. This is twice in two “public meetings” that I was not recognized.

Additionally I noticed that several people attending the meeting in person were elderly or disabled, but, for them to participate they had to endure waiting for 5+ hours. Again, why not reschedule? What is the rush?

Also I want to note that both the developer and the architect mischaracterized the neighborhood in both public meetings as comprised of rental apartments even pointing to the condominium owned residences as such. Why?

A cursory online search for rental apartments on the Upper East Side shows numerous similar apartment availability.

Wouldn’t it be better to develop affordable condominium homes that would add to the inventory of available owned housing while also providing a way for families to build family real estate equity

wealth for future generations? Would this not be one small step to help address generational financial inequality?

NEED MORE CREATIVES THAN JUST ONE DEVELOPER AND ONE ARCHITECT

Why just one plan of one developer and his architect?

Why not a design competition?

Why not more architects to chose from with many creative ideas for the best for the City and for all its citizens and neighborhoods?

We need a better way to include residents input **early** in the process and **with more than one developer and one architects plan** to provide what is best for our city and our residents for economic equity, aesthetics, and environmental goals for more livable places for all Milwaukee neighborhoods.

The buildings that are being approved (1) looks like every other contemporary commercial building resembling a hospital or clinic or doctors office (2) Visual and Aesthetic Impacts: The buildings are so large that they jut out in front of both churches (St Marks Episcopal and Church in the City) obstructing the view sheds (3) why not match materials to the buildings on the same street rather than across the street?

ZONING

What is spot zoning and when is it lawful?

Spot zoning is when a zoning ordinance is amended to zone a relatively small area for **uses significantly different from those allowed in the surrounding area to favor the owner of a particular piece of property.** Ohm, *Guide to Community Planning in Wisconsin* at 105. Spot zoning is not necessarily illegal because such zoning is not necessarily inconsistent with the purposes for which zoning ordinances can be passed. However, rezoning should be consistent with long-range planning and based upon

considerations which affect the whole community. **Therefore spot zoning should only be indulged in where it is in the public interest and not solely for the benefit of the property owner requesting the rezoning. *Bubolz v. Dane County*, 159 Wis.2d 284, 464 N.W.2d 67 (Ct. App. 1990). https://www.lwm-info.org/1136/Zoning-FAQ-6**

This is an historic district. Why rush to change the zoning?

I agree with KEEP OUR NEIGHBORHOOD'S AESTHESTICS (https://www.konahackett com):

> "Is such a big jump in zoning really necessary? Why? What about the process? Should we accept that the city hasn't planned this change but is reacting with a simple yes/no to a single plan from a single developer? How can this process provide the most benefit for all its citizens?"

DEVELOPER TARGETS RENTERS
Additionally there is no recognition that another high scale rental apartment building vs. home ownership does nothing to help Milwaukeeans build wealth for themselves and their families' future generations which would help diminish the financial inequality that jeopardizes our democracy and future.

How many high-end expensive rentals does Milwaukee need?

The rents for these apartments will likely be higher than the monthly mortgage payment we have on our owned condominium on the corner.

How about affordable mortgages for what these renters will be paying?

The developer stated that he is targeting the retired and empty nesters - that is us but we would never rent as it is throwing money away with no chance of building equity and wealth for our family's next generation.

These upscale high rent apartments do not provide affordable housing or ownership opportunities that may be a step in mitigating generational minority economic inequality.

Sincerely,

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com; finch.barbara@gmail.com; kgbmilw@yahoo.com; kbarbe@hacm.org; mkekitchen@gmail.com; phil.blenski@gmail.com
Subject: FW: Zoning Meeting on September 13, 2022

Hi all:

A copy of the letter Joan sent to the Aldermen regarding the Zoning Meeting on September 13th.

-Jane Strykowski #D-

Sent from Mail for Windows

From: Jane Strykowski
Sent: Sunday, September 11, 2022 3:32 PM
To: mmurph@milwaukee.gov; rjbauma@milwaukee.gov; Marina@milwaukee.gov; jperez@milwaukee.gov; Russell.Stamper@milwaukee.gov
Subject: Zoning Meeting on September 13, 2022

Dear Alderman Murphy, Bauman, Dimitrijevic, Perez and Stamper:

I am writing as an Eastside neighbor objecting to the spot zoning of the 55-unit apartment building on the 2600 block of North Hackett Avenue.

I understand the idea of increasing density in a desirable city neighborhood such as mine. (I read former mayor John Norquist's "The Wealth of Cities" from cover-to-cover.) What I don't understand is why the city would want to increase a property zoned for RM3 all the way up 3 levels to RM6. Surely a development more appropriately sized for this small, one-way block would still be a net gain in tax dollars for the City of Milwaukee and would preserve some of the green space and save some of the over 100-year-old trees currently on the lot.

I object to yet ANOTHER underutilized market-rate apartment building. Before I (recently) retired as an RN, I worked with a 20-something co-worker who told me that she and her friends have given up the idea of ever owning property. What kind of citizens do young people make when they have no real stake in their neighborhoods? It is just plain wrong to deny the next generations the option to own affordable housing units.

I do not understand the lack of any actual "city planning" when it comes to new construction in this city. The city behaves as though they are so desperate for tax dollars that they will say "yes" to any project brought forward by developers. The total lack of seeking (or welcoming) input from concerned, invested citizens (other than what is minimally required under law)

baffles me. We live our daily lives here and pay our property taxes. We have an affection for and care-taking responsibility for the historic buildings we live in. When this small block was originally conceived of in the early 1900's, the city planners never envisioned a building of these proportions being placed in this spot. (Nor did they foresee the car culture that would follow.)

Why isn't the city fighting for the kind of developments we really need? This site on Hackett could be used for several owner-occupied buildings sized like the vintage apartment buildings across the street. The condominium units could be 1,000 to 1,500 square feet in size and affordable for middle-income people. (I lived in a 900 square foot, 2 bedroom vintage apartment-turned condo on Prospect Avenue comfortably for 10 years.) The whole process is "bass-ackwards" as my grandfather used to say. The city officials should be telling the developers what its goals are—taking charge of the conversation. The federal government has not done this effectively, so it is up to the individual cities. (I believe democracy is felt most strongly at the local levels anyway.)

You are elected officials, and as such should be more attuned to the needs of your constituents. We love our historic neighborhood and wish to retain its character as much as possible. A 55-unit market-rate apartment will not accomplish this. A more modest, perhaps owner-occupied project would be more appropriate. (What works on Prospect Avenue is not transferable to our petite Hackett Avenue site.) This over-building on small, congested city streets is a terrible precedent. Please vote against this! You are our last chance to alter the course of this particular construction project.

Thank you for your attention.

Sincerely,

Joan M. Strykowski
2633 N. Hackett Avenue #D
Milwaukee, WI 53211

Sent from Mail for Windows

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