



Formation and Organization of the Zoning Board

Composition of the Zoning Board

Legal requirements regarding membership, appointment and terms of zoning board members differ among counties, towns, cities and villages as specified in state statute. Generally, city, village and town zoning boards are called “zoning boards of appeal”. Counties, and the roughly 200 or so towns throughout the state that operate under town zoning (without village powers) are called “zoning boards of adjustment”. The composition of county and town boards of adjustment and city, village and town boards of appeal differ slightly and are summarized in the table in Figure 4.

| Figure 4: Composition of the Zoning Board | |
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| County Zoning Board of Adjustment | <ul style="list-style-type: none"> • Three to five members²² plus two additional alternates • Members must reside in the county but outside of incorporated area • No more than one member from each town • Appointed by the county executive or county administrator, if present, or the county board chair²³ • Appointed for three-year staggered terms, beginning July 1 • Appointment subject to approval of the governing body |
| Town Zoning Board of Adjustment²⁴ | <ul style="list-style-type: none"> • Three members plus two additional alternates • Members must reside in the town • No more than one member from the town board • Appointed by the town board for three-year staggered terms |
| City, Village or Town²⁵ Zoning Board of Appeals | <ul style="list-style-type: none"> • Five members plus two additional alternates • Appointed by the city mayor, village president or town board chair for three-year staggered terms • Appointment subject to approval of the governing body |

²² Three members for counties with population greater than 500,000. Up to five, but not less than three members for counties with population less than 500,000 as specified by county resolution.

²³ Wis. Stat. §§ 59.17(2)(c), 59.18(2)(c) & 59.694(2)(a)

²⁴ Applies to towns without village powers operating under Wis. Stat. § 60.65.

²⁵ Applies to towns exercising village powers under Wis. Stat. § 60.62.

Recruitment of Members

The selection and appointment of zoning board members is an important decision. Selecting members with care often improves the quality, acceptability and defensibility of decisions made by the zoning board. Strong candidates should possess effective decision-making skills, the ability to remain open-minded and impartial, an ongoing commitment to continuing education and skill development, familiarity with zoning and land use concepts, an understanding of the unique role of the zoning board, and long-term dedication to the position. Suggested criteria for appointment of members include:²⁶

- 1. Diversity of membership.** The zoning board should reflect the diversity and uniqueness of the community it represents. In order to provide broad familiarity with differing landscapes, development patterns and other community issues, members should be appointed to represent the different geographic areas and jurisdictions present in the community. In addition, consideration should be given to the age, gender, ethnicity and professional composition of the zoning board.
- 2. Land use expertise.** To ensure that zoning board members are capable of understanding development proposals and determining their impacts, individuals with academic or professional knowledge of land use law, zoning, natural resources or construction and development practices, and those who are able to read site plans and related maps should be considered for appointment.
- 3. Commitment to community service and continuing education.** Members who have demonstrated an interest in community service by serving as elected officials, citizen advisors or in some other capacity and who are willing to attend educational sessions provided for zoning board members should be appointed in order to provide stable membership and sound decision-making by the board.
- 4. Understanding and acceptance of the nonpartisan, quasi-judicial role of the zoning board.** Perhaps most important,

²⁶ Additional guidance related to recruiting, selecting, and retaining dedicated and representative board or commission members is provided in the Center for Land Use Education bulletin, *Recruiting and Retaining Qualified Plan Commissioners*. Douglas Miskowiak and Chin-Chun Tang. September 2004. Center for Land Use Education. 20pp. Available: <http://www.uwsp.edu/cnr/landcenter/pubs.html>

prospective members must understand and accept that the zoning board is not a policy-making body and that it must apply the law to specific fact situations whether or not they agree with the law or regulation in question.

Considerations for Appointment

In order to ensure the objectivity of zoning board decisions, the personal and professional interests of zoning board members must be carefully considered. Individuals who are selected for their land use or zoning expertise, such as developers or real estate professionals, may find themselves in a position where a zoning board decision involves a professional acquaintance, family member or personal interest. Occasional conflicts of interest are likely to occur and should be avoided by asking members to remove themselves from the decision-making process in these instances (*see statutory conflicts of interest in Chapter 6*). Such occurrences may also be reduced by selecting individuals for the zoning board that do not hold a direct financial interest in local land use decisions.

In all situations, it is necessary to balance the contribution of prospective zoning board members against the potential for conflicts of interest or litigation. We advise that members of the local governing body not be appointed to serve on the zoning board. It is difficult to separate the legislative and quasi-judicial roles associated with each position. Wide discussion of public policy issues (such as land use laws) and constituent representation may be encouraged in the legislative process, but they are strictly limited or prohibited by due process concerns of zoning board decisions (*see ex parte communication in Chapter 6*). Furthermore, it would be difficult for an individual in this position to maintain objectivity when interpreting or applying a zoning policy they had voted against as an elected official. The potential lack of objectivity or even *appearance* of such could lead to litigation.

Appointment of Alternates

The appointment of two **alternate** members to the zoning board is required by law. By statute, the designated “first alternate” is required to act with full powers of the zoning board when a regular member cannot vote due to conflict of interest or absence. The

Alternate - a member of the zoning board required to act in the place of a regular zoning board member if a member is absent or has a conflict of interest.

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“second alternate” is required to act when the first alternate or multiple members of the zoning board are unable to vote.²⁷

Appointing alternates helps to ensure that landowners and developers are provided with timely and unbiased decisions by minimizing the postponement of decisions due to absences, resignations, or conflicts of interest. Individual communities vary in their expectations of zoning board alternates. Some require that alternates attend all meetings and hearings including opportunities for continuing education, while others simply encourage that first and second alternates attend, or call in the case of known conflicts. The latter scenario presents problems as there may be last minute absences or unforeseeable conflicts of interest.

Filling Vacancies

If a zoning board member or alternate cannot serve the full length of their term, the vacancy is filled for the remaining portion of the term. Though not required, zoning board alternates may serve as ideal candidates to fill these vacancies. After serving in an “apprentice” role and gaining familiarity with the day-to-day issues and operating procedures of the zoning board, these members may easily transition into a regular position.

Removal for Cause

If necessary, zoning board members may be removed from their position, but only for cause after written charges and an opportunity for a public hearing.²⁸ There have been very few instances where such measures have been taken in Wisconsin.

Selection and Duties of Zoning Board Officers

A county zoning board of adjustment chooses its own chair²⁹ and may choose a vice-chair and secretary. The chair of the city, village or town³⁰ governing body designates the zoning board of appeals chair subject to approval by the governing body.³¹

²⁷ Wis. Stat. §§ 59.694(2)(am) & 62.23(7)(e)2

²⁸ City, village and town board of appeals - Wis. Stat. § 62.23(7)(e)2

²⁹ Wis. Stat. § 59.694(2)(c)

³⁰ Authority for zoning boards in towns with village powers. Where a town has not adopted village powers, Wis. Stat. § 60.65 applies.

³¹ Wis. Stat. §§ 62.23(7)(e)2 & 62.09(3)(e)

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The duties of the zoning board chairperson include:³²

1. Determining dates and times of meetings and hearings, other than those set by the board as a whole.
2. Exercising responsibilities under the open meetings law (*see Chapter 5*).
3. Presiding at meetings and hearings.
4. Leading the board through agenda items and calls for votes.
5. Deciding points of order subject to reversal by majority vote of the board.
6. Administering oaths to witnesses and issuing subpoenas to compel their attendance.
7. Supervising work of the board secretary.

In the case of the chairperson's absence, the vice chair or acting chair assumes the responsibilities of the chairperson.

The zoning board may use zoning agency staff or retain its own staff for clerical functions as authorized by the governing body. However, the zoning administrator or other staff person who represents the municipality and presents testimony to the board should remain independent from the board and should not serve as board secretary.

The duties of the secretary include:

1. Performing record keeping and clerical duties.
2. Providing public notice of hearings and meetings (*see Chapter 5*).
3. Implementing compliance with the Wisconsin public records law.



Figure 5: Kenosha County Board of Adjustment (left to right) Secretary Dawn LaPoint, Senior Land Use Planner Andy M. Buehler, Chairman William Glembocki, Vice Chairman Emily Uhlenhake, Members Kay Goergen and Barbara Ford.

³² Counties – Wis. Stat. § 59.694(3); Cities, Villages and Towns – Wis. Stat. § 62.23(7)(e)3.

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