

Welcome to the Town of East Troy Planning Commission!

There is a lot of information attached, please try not to feel overwhelmed and know that there is a team behind you that is happy to help you navigate being a new commissioner. If you are not familiar with open meetings, public records or parliamentary procedure, I would encourage you to review this information. A lot of the materials can be treated as resource information. As questions arise, you will have an easy reference guide to find some of the answers. Please know even seasoned commissioners have questions about nuances of certain requests and do reach out.

**How Does this Work?** The Planning Commission Public Hearing is the first Wednesday of the month at 6:30pm and the Planning Commission Decision-Making meeting is the third Wednesday of the month at 6:30pm. However, it is not by ordinance that there must be a second meeting prior to a vote of approval or denial being taken. The Town Board receives the Planning Commission decision in the form of a resolution drafted by the Planning Commission Secretary, Jen and reviewed by the Town Attorney; The Town Board then makes the final advisory decision at the next Regular Town Board meeting (typically scheduled for the second Monday of the month at 6:30 pm). Walworth County Planning & Zoning then hears the request, after they receive the Town's advisory decision in the form of a resolution via email prior to their meeting. The County then communicate it's decision back to us in a letter by email as well as USPS mail for our record. The Town of East Troy does not have their own Zoning Code, so the applicant must receive final approval from the County.

**Each Month:** The agenda and packets are distributed to Commissioners two weeks prior to the meeting. If there are large items in the packet, we will ask that you stop in to pick up your physical packet. Packet items will be available via email, possibly shrunk to a smaller scale for blueprints or maps. We publicly post electronic packets on our website as well <https://townofeasttroywi.gov/agendas-minutes/>. If there is no request on the agenda, Planning Commission Secretary, Jen, will notify Commissioners via email or text (based on their preference) as soon as it has been confirmed.

If you are an alternate, the Planning Commission Secretary, Jen, will contact you via text or email (depending on your preference) when you are needed. Please get back to her as soon as possible to be sure that we have a full panel of Commissioners whenever possible. Each Commissioner is asked to give as much notice as possible of their pending absence to give alternates the ability to prepare for the meeting they are being asked to attend. Annually, the meeting schedule is posted on the Planning Commission Page of the Town Website to allow Commissioners and Applicants the ability to plan ahead and have a clear expectation of the timeline. Applicants have until the Decision-Making Meeting date to turn in complete packet information as requested on the application to be on the next month's Agenda. This gives Planning Commission Secretary, Jen, roughly two days to upload the packets and create the agenda for the month. Prior to the meeting, the Planning Commission Secretary, Jen, posts the agenda in the official posting sites, uploads the packet and agenda onto the website and mails out 300-foot letters to all within 300-feet of each of the parcels on the agenda, to be sure that all interested parties have been notified of the request. The 300-foot parameter is found within the Zoning Code.

## *Public Hearing Checklist*

1. **Prior to meeting.** [designated staff]
  - A. Arrange for alternates due to anticipated absence or conflict of interest.
  - B. Send the agenda, proposal, and staff reports to commission members.
  - C. Comply with open meeting law and public hearing notice requirements.
  - D. Arrange for a tape recording of the hearing or a court reporter.
2. **Preliminary matters at meeting.**
  - A. Distribute and collect hearing appearance slips. (see example on page 22). [chair]
  - B. Call the meeting to order. [chair]
  - C. Take roll and confirm that a quorum is present. [secretary]
  - D. Confirm compliance with open meetings law and public notice requirements. [commission]
  - E. Read the agenda and amend as necessary (reorder hearings). [chair and commission]
  - F. Inform the public in attendance of hearing procedures (see script on page 23). [chair]

For Legislative Proceedings: (i.e. plan or ordinance adoption or amendment)

3. **Public hearing.**
  - A. Open the public hearing. [chair]
  - B. Provide a summary and rationale for the proposal. [commission or staff]
  - C. Allow time for group and individual questions and answers. [commission, staff, public]
  - D. Request formal statements from the public. [chair]
  - E. Close the record and the hearing. [chair]
4. **Deliberation and recommendation.**
  - A. Decide/vote on the proposal.
  - B. Forward recommendation to the governing body.

For Quasi-Judicial Proceedings: (i.e. conditional use, variance, rezone of individual property)

3. **Public hearing.**
  - A. Open the first public hearing. [chair]
  - B. Read petition or application. [staff]
  - C. Report on any site inspection. [secretary or staff]
  - D. Request a statement by the applicant. [chair with questions by commission]
  - E. Read the staff report. [staff with questions by commission]
  - F. Report on related correspondence. [secretary]
  - G. Disclose any ex parte communication. [commission]
  - H. Request statements of witnesses (pro/con/information). [chair with questions by commission]
  - I. Request a response by the applicant (or after each witness). [chair with questions by commission]
  - J. Request a response by staff. [staff with questions by commission]
  - K. Ask any final questions. [commission]
  - L. Close the record and the hearing. [chair]

4. **Deliberation and decision or recommendation.**

(Note: many plan commissions conduct all hearings before deliberating on decisions)

- A. Findings of fact
    - Determine whether the commission has the authority to make the decision.
    - Determine whether application contains information necessary to make a decision.
    - Record pertinent facts on the decision form and in meeting minutes.
  - B. Conclusions of law
    - Specify applicable legal standards (found in state statutes, case law or local ordinance).
    - Determine which facts relate to the legal standards.
    - Determine whether the legal standards are met.
    - Agree on any permit conditions.
  - C. Order and Determination
    - Decide/vote on the case.
    - Direct staff to take any necessary action.
5. **Repeat steps 3 and 4 for additional hearings.**
  6. **Other agenda items.**
  7. **Adjourn meeting.**

In 2024, a **Plan Commission Workshop** was held and a handbook was provided to all that attended. I have attached a link to this handbook to help you on your journey to becoming comfortable in your role as a commissioner. <https://storage.googleapis.com/juniper-media-library/269/2025/06/PLAN%20COMMISSION%20HANDBOOK%20searchable.pdf> Please review the handbook, but specifically chapter two of the Plan Commission Handbook holds specific information about Meeting and Hearing Conduct. How well a community accepts a Planning Commission decision depends on much more than the decision itself. Public relations matter. The actions of planning commission members influence whether citizens feel they were listened to, respected and given fair consideration when the decision was made. Chapter two outlines a six-step plan to help focus on that community outreach and making sure that what is being communicated is being well received by our residents.

As you may know the Planning Commission is the first impression of applicants to this process, our office prides it's self on making each applicant feel heard and helping them to have all of the tools they need to present a complete and thorough application packet. This process is confusing to most applicants as they are basically applying for the Town and County in tandem, even though they must be heard by the Town first. This provides the applicant with the ability to know that their application is meeting both the Town and County minimum requirements. The Commissioners pride themselves on level headed collaboration among the Commission and making their decisions based on careful interpretation of the County Zoning Regulations (code). The Planning Commission is advisory to the Town Board and the Town Board is then advisory to the County Zoning Administration Team. (The exception to this rule is that the Town has more authority in zoning decisions and Amendments to the 2050 plan.) After each decision is reached whether to approve or deny the request of the applicant, it is then communicated to the next governing body through The Planning Commission secretary, Jen, by resolution. Each resolution is crafted to touch upon the criteria in which the decision was based upon. The application outlines the criteria which must be met for each type of request. **As Commissioners it is important to state verbally for the record which of the criteria you are using to base your decision upon. If it is not stated the secretary cannot use it in the resolution.** Below is a summary of that information:

#### Zoning Checklist

- Have you reviewed the Walworth County Zoning Application Form?
- Is the proposed zoning change consistent with the 2050 Land Use Plan?
- Is the proposed zoning change consistent with surrounding properties?
- Does the proposed zoning change have any significant impact on public facilities or services? (i.e. highways, streets, water, sewage, drainage, schools, emergency services, etc.).
- Have you spoken to Chuck Decker, Sanitary District 2, about sewer vs septic for your property? Will he submit a letter?

#### Conditional Use Checklist

- Have you reviewed the Walworth County Conditional Use Application Form?
- Would the conditional use impact existing traffic patterns?
- Will your proposal increase the percentage of impervious surface upon the property in which the conditional use is being proposed? If yes, please quantify the amount of impervious surface to be created and mitigation measures to be implemented to reduce erosion potential to the adjoining property.
- Will your proposal have any significant impact on public facilities or services? (i.e. highways, streets, water, sewage, drainage, schools, emergency services, etc.).
- Will your proposal create harmful or nuisance effects that include noise, dust, smoke, odor, or other factors?

### Variance Checklist

- Have you reviewed the Walworth County Variance Application Form?
- Provide details for the 3-step test
  - 1) UNIQUE PROPERTY LIMITATIONS. Compliance with the terms of the Code of Ordinances is prevented by unique features of this property
  - 2) UNNECESSARY HARDSHIP. An unnecessary hardship is present because:
  - 3) NO HARM TO PUBLIC INTERESTS. A variance will not be contrary to the public interest.
- Are you requesting any modifications to any setbacks (street, side, rear or shore yard)?
- Will your proposal increase the percentage of impervious surface upon the property in which the conditional use is being proposed? If yes, please quantify the amount of impervious surface to be created and mitigation measures to be implemented to reduce erosion potential to the adjoining property.

### Certified Survey Map/Plat Review

- Are the new lots conforming to the current zoning code for the parcel in:
  - Size (minimum lot size met)
  - Does the new layout create future issues with road access for any of the parcels?
  - Are there any clerical issues on the survey map that should be adjusted?
  - Does the new layout create an issue for road access to neighboring parcels?
- Does this use of the property fit within the current zoning and 2050 plan?

### 2050 Comprehensive Plan Amendment

Often referred to as a “Smart Growth Plan Law” provides a framework for the development, adoption, and implementation of comprehensive plans in Wisconsin. The law includes a consistency requirement, whereby zoning, subdivision and official mapping ordinances adopted and enforced by counties, cities, villages and towns must be consistent with the comprehensive plan adopted by the county or local unit of government. This consistency requirement took effect on January 1, 2010. The state planning law requires that a comprehensive plan include all of the following plan elements:

- 1) Issues and opportunities
- 2) Housing
- 3) Transportation
- 4) Utilities and community facilities
- 5) Agricultural, natural and cultural resources
- 6) Economic development
- 7) Intergovernmental cooperation
- 8) Land use
- 9) Implementation

Wisconsin Statutes pertaining to amending a comprehensive plan can be found at:

<https://docs.legis.wisconsin.gov/statutes/statutes/66/x/1001/4>

The County Zoning Team meets annually to review any Comprehensive map Amendments that may have been made over the last calendar year. When Amendments or what may be referred to as redesignations come to the Planning Commission, they can be heard as any other zoning request is heard before the commission, but the vote of the Planning Commission and Town Board will not be heard on the County Agenda until the Fall of that year when their annual review is conducted. This process is explained to the applicant by the Town and County at the time of application. In some cases, a redesignation may be required prior to the rezoning.

**How Does the Commission Make a Decision?** Hearings on Conditional Use Applications are considered to be quasi-judicial hearings and have specific parameters for how information is collected to be used for the decision making by Commissioners and Board Supervisors. It has been suggested by the Town Attorney, Jim Mills, that the Commission treat ALL requests, as a quasi-judicial hearing to prevent confusion. (Although by definition a rezone is not a quasi-judicial proceeding, it is recommended that the safeguards afforded quasi-judicial matters apply to Town rezone applicants as well). With that said, ***Commissioners should ask the applicant to provide any information that they need to proceed in their decision making, rather than doing their own research.*** While this may require a delay in the application approval, it is the required exchange of information. For example: If the applicant has some wetland on their property and they are requesting a rezone for an abutting portion of their land; if the commission does not have a certified wetland delineation on file, what do you do? A Commissioner can request a wetland delineation be done and vote to table the request until a date where it is completed. This is not saying that Commissioners cannot reference the Zoning Code or information in this training, however it is saying that any information specific to the request before you, must be provided in the packet and or provided by the applicant, or in public comment on the record to be considered in your decision making. Information obtained through public comment can be discussed with the applicant in the meeting (on the record) and then the applicant can be asked to verify the information or to disprove the information as it may arise. It is best practice to have the applicant provide the information being considered. The Wisconsin Town's Association handbook also cautions officials in their language stating that officials have to base their decisions in quasi-judicial proceedings on the applicable legal standards and evidence in the record, beware of acting on mere personal or public opinion, and should avoid having discussions on quasi-judicial matters with parties and others outside of noticed public meetings and hearings. (i.e. "ex parte" contacts) These relatively formal decisions are based on the application of the law (the applicable statutes, ordinances, and rules). To specific fact situations where facts are determined on from the record (applications, packet materials, and testimony) in contrast to the more discretionary procedure applicable in legislative type matters (making policy) where a local government body member can have outside conversations and develop his or her position without regard to a formal record. **We are only going to be using information that IS ON THE RECORD (in our packets, provided by the applicant or provided by a party if interest in an open meeting) as a part of our decision making.**

**What Does it Mean to Abstain Myself from a Vote, and When Should I?** The Wisconsin Town's Association, Officer's handbook offers guidance on this topic. Stated broadly, when a local government official, a member of the official's family or an organization with whom the official or family member is associated is involved in a public matter, the official needs to take a step back and question whether there are problems concerning his or her involvement in the matter. They suggest asking yourselves the following questions when considering if there is a conflict:

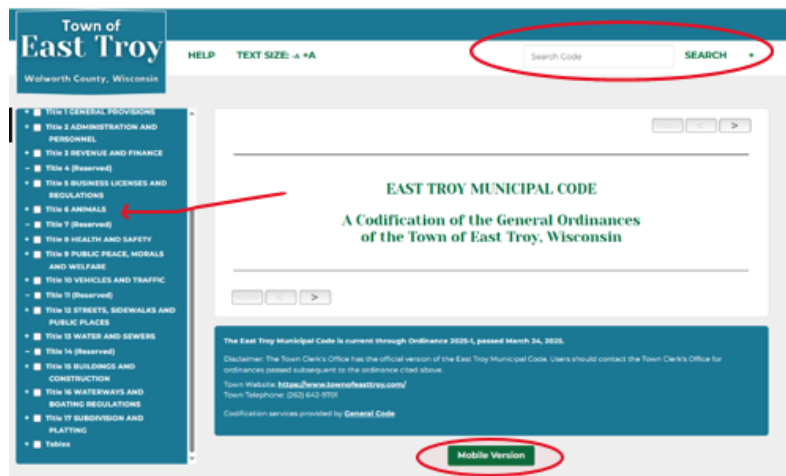
- How would I like to read about my actions on this matter in the newspaper?
- Could I explain to my child why I decided to vote on this matter?
- Does this seem fishy?

The answer may be that involvement poses no problem. Sometimes there may be gray areas where the official needs to balance the benefits of involvement (e.g. representing the electors, using the official's expertise) with the drawbacks (e.g. how would it look, the risk of violating the law). When officials are acting in a quasi-judicial capacity, compliance with the general statutory and local conflict laws is a minimum requirement. Officials need to be impartial or unbiased in quasi-judicial proceedings. They need to consider whether the nature of their relationship or dealings with the person could bias their judgement, or give the appearance of doing so. Similarly, in a recent case, the court ruled that a conditional use permit application had to be reheard because of the improper participation on the decision-making body of a member whose letter in support of the applicant was a part of the record. *Keen v Dane County*, 269 wis.2d 488(Ct. App. 2003).

When a local public official abstains from participating in a matter because of a conflict or bias it should be understood that it is not enough to merely refrain from voting. It is strongly recommended that the official remove himself or herself from the table where the rest of the board is sitting and join the audience or leave the room. Also, he or she may not take part in any board discussions or other information exchanges in his or her official capacity on the topic in question. The abstention should be noted in the minutes.

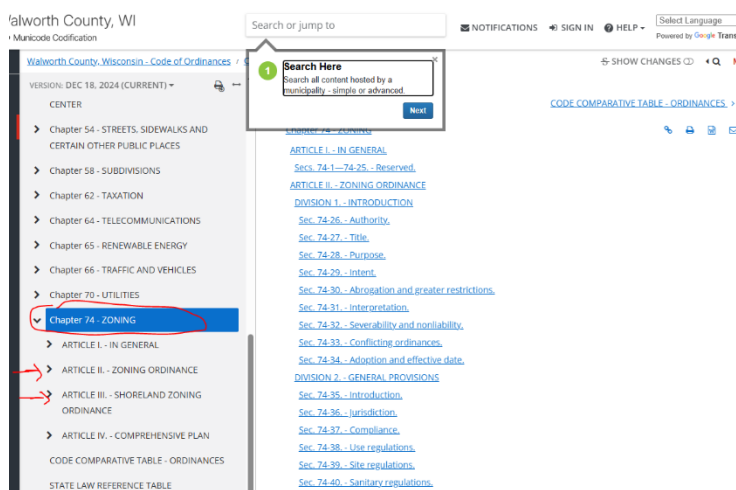
Town of East Troy Municipal Code (Ordinances) can be found at:

<https://www.codepublishing.com/WI/EastTroy/> Titles 12-17 may be helpful to review for requests. There is a search bar on the top right to be able search out specific topics. The key on the left gives the subject of each chapter and each line acts as a link to take you to that chapter.



The Walworth County Zoning Code of Ordinances can be found at:

[https://library.municode.com/wi/walworth\\_county/codes/code\\_of\\_ordinances?nodeId=WACOCOOR\\_CH74ZO](https://library.municode.com/wi/walworth_county/codes/code_of_ordinances?nodeId=WACOCOOR_CH74ZO). It is a great resource to read through with each request. There are several paper resources in the secretary's office as well to review at any time if you prefer physical copies. The search bar is a fantastic timesaver when searching out a specific topic.



Below is a table of the Zoning Districts in the Town of East Troy:

**Table II-1**  
**ZONING DISTRICTS IN THE TOWN OF EAST TROY: JANUARY 2010**

District Type	District Name	Minimum Lot Size/ Maximum Density		Area	
		Conventional Design	Conservation Developments	Acres	Percent of Total
Agricultural	A-1 Prime Agricultural Land	35 acres	N/A	7,216	38.1
	A-2 Agricultural Land	20 acres	One dwelling unit per 20 acres and minimum lot size of 20,000 square feet	1,682	8.9
	A-3 Agricultural Land Holding	35 acres	N/A	597	3.2
	A-4 Agricultural-Related Manufacturing, Warehousing, and Marketing	- - <sup>a</sup>	N/A	44	0.2
	A-5 Agricultural-Rural Residential	40,000 square feet	N/A	48	0.3
	Subtotal	- -	- -	9,587	50.7
Conservancy	C-1 Lowland Resource Conservation	- -	N/A	1,214	6.4
	C-2 Upland Resource Conservation	5 acres	One dwelling unit per 5 acres and minimum lot size of 20,000 square feet	3,586	18.9
	C-3 Conservancy-Residential	100,000 square feet	One dwelling unit per 100,000 square feet and minimum lot size of 20,000 square feet	69	0.4
	C-4 Lowland Resource Conservation (shoreland)	- -	N/A	1,269	6.7
	Subtotal	- -	- -	6,138	32.4
Public	P-1 Recreational Park	- - <sup>a</sup>	N/A	322	1.7
	P-2 Institutional Park	Sewered: 10,000 square feet Unsewered: As required by Section 74-39 <sup>b</sup>	N/A	213	1.1
	Subtotal	- -	- -	535	2.8
Residential	R-1 Single-Family Residence (unsewered)	As required by Section 74-39 <sup>b</sup>	One dwelling unit per 40,000 square feet and minimum lot size of 20,000 square feet	1,011	5.3
	R-2 Single-Family Residence (sewered)	15,000 square feet	One dwelling unit per 15,000 square feet and minimum lot size of 10,000 square feet	235	1.2



Table II-1 (continued)

District Type	District Name	Minimum Lot Size/ Maximum Density		Area	
		Conventional Design	Conservation Developments	Acres	Percent of Total
Residential (continued)	R-2A Single-Family Residence (sewered)	40,000 square feet	One dwelling unit per 40,000 square feet and minimum lot size of 15,000 square feet	0	0.0
	R-3 Two-Family Residence (sewered or unsewered)	Sewered: 15,000 square feet per duplex building Unsewered: As required by Section 74-39 <sup>b</sup>	Sewered: One dwelling unit per 7,500 square feet and minimum lot size of 5,000 square feet per dwelling unit Unsewered: One dwelling unit per 40,000 square feet and minimum lot size of 10,000 square feet per dwelling unit	16	0.1
	R-4 Multiple-Family Residence District (sewered or unsewered)	Sewered: Six dwelling units per acre Two family: Minimum lot size of 12,000 square feet Multiple family: Minimum lot size of 15,000 square feet Single family: Minimum lot size of 15,000 square feet Unsewered: As required by Section 74-39 <sup>b</sup>	N/A	16	0.1
	R-5 Planned Residential Development (unsewered)	40,000 square feet of lot area per dwelling unit	N/A	0	0.0
	R-5A Planned Residential Development (sewered)	Up to eight dwelling units per net developable acre	N/A	0	0.0
	R-6 Planned Mobile Home Park Residence	Up to five dwelling units per net developable acre	N/A	0	0.0
	R-7 Mobile Home Subdivision Residence (sewered or unsewered)	Sewered: 15,000 square feet Unsewered: As required by Section 74-39 <sup>b</sup>	N/A	0	0.0
	R-8 Multiple Family District (sewered or unsewered)	Sewered: 10,890 square feet Unsewered: As required by Section 74-39 <sup>b</sup>	N/A	0	0.0
	Subtotal	- -	- -	1,278	6.7



Table II-1 (continued)

District Type	District Name	Minimum Lot Size/ Maximum Density		Area	
		Conventional Design	Conservation Developments	Acres	Percent of Total
Commerical	B-1 Local Business	Sewered: 7,500 square feet Unsewered: - <sup>c</sup>	N/A	2	<0.1
	B-2 General Business	Sewered: 7,500 square feet Unsewered: - <sup>c</sup>	N/A	13	0.1
	B-3 Waterfront Business	- <sup>a</sup>	N/A	8	<0.1
	B-4 Highway Business	Sewered: - <sup>a</sup> Unsewered: - <sup>c</sup>	N/A	27	0.1
	B-5 Planned Commercial- Recreational Business District	Up to 10 dwelling units per net developable residential acre	N/A	0	0.0
	B-6 Bed and Breakfast	Sewered: 15,000 square feet Unsewered: As required by Section 74-39 <sup>d</sup>	N/A	10	0.1
	Subtotal	- -	- -	60	0.3
Industrial	M-1 Industrial	Sewered: - <sup>a</sup> Unsewered: - <sup>c</sup>	N/A	33	0.2
	M-2 Heavy Industrial	Sewered: - <sup>a</sup> Unsewered: - <sup>c</sup>	N/A	0	0.0
	M-3 Mineral Extraction	- -	N/A	103	0.5
	M-4 Sanitary Landfill	- -	N/A	7	<0.1
	Subtotal	- -	- -	143	0.7
Surface Water	- -	- -	- -	1,187	6.3
Total	- -	- -	- -	18,928	100.0

<sup>a</sup> Sufficient area for the principal structure and its accessory buildings, all required yards, and off-street parking and loading areas.

<sup>b</sup> Section 74-39 of the County Zoning Ordinance specifies that the width and area of all lots not served by a public sanitary sewage system or other approved system shall be sufficient to permit the use of a private onsite wastewater treatment system (POWTS) designed in accordance with the county sanitary ordinance. The width of all lots which have soils suitable for the use of a private onsite wastewater treatment system shall not be less than 150 feet and the area of all such lots shall not be less than 40,000 square feet per dwelling unit to be constructed on the lot.

<sup>c</sup> 40,000 square feet in lot area per principal use or structure and sufficient area to meet off-street parking and loading requirements.

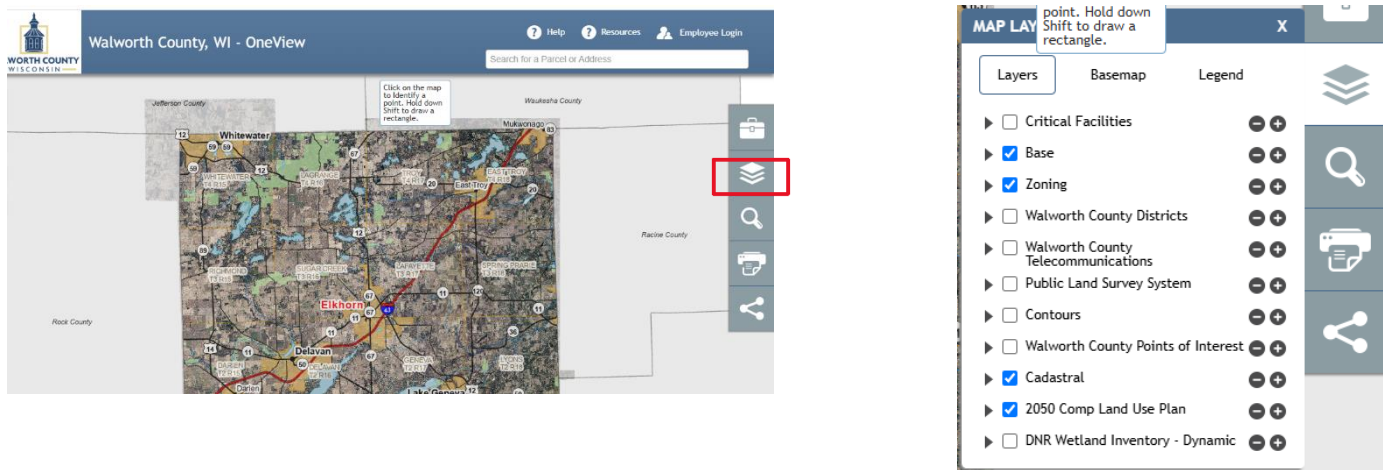
Source: Walworth County and SEWRPC.

Here is a link to the **2050 Comprehensive Plan map**: <https://www.co.walworth.wi.us/DocumentCenter/View/1576/2050-Walworth-County-Land-Use-Plan-Map-PDF> the key to the right of the document gives you the ability to zoom into the map and see the future use for this area. There is also a physical copy of this available in the secretary's office.

**Southeastern Wisconsin Regional Planning Commission (SWRPC)** <https://www.sewrpc.org/Local-Planning/Comprehensive-Planning> is an excellent resource for comparing other areas to our Comprehensive Plan to see if possibly changes we are making may be aligned with our neighboring counties.

The 194-page comprehensive plan can be found at the following link:  
[www.sewrpc.org/SEWRPCFiles/Publications/CAPR/capr-288-2nd-ed-comp-plan-walw-co.pdf](http://www.sewrpc.org/SEWRPCFiles/Publications/CAPR/capr-288-2nd-ed-comp-plan-walw-co.pdf)

**Walworth County GIS** mapping system is also a wonderful tool to get a better idea of not only the layout of the property making the request, but that of the neighboring properties to consider the impact or potential of public harm to the community. <http://gisinfo.co.walworth.wi.us/oneview/> if you drill down using the menu on the right there is the ability to highlight the zoning classifications, contours, DNR wetlands and the 2050 Comprehensive land use as well.



Here are a few other helpful links to help you become better acquainted with parliamentary procedure, Open Meeting Laws and recognizing and avoiding conflicts of interest.

Understanding and complying with Open Meetings Law-League of Wisconsin Municipalities  
<https://storage.googleapis.com/juniper-media-library/269/2025/06/OPEN MEETINGS LAW WMCA.pdf>

Parliamentary Procedure

<https://storage.googleapis.com/juniper-media-library/269/2025/06/PARLIAMENTARY PROCEDURE AND THE CONDUCT OF MUNI MEETINGS.pdf>

<https://docs.legis.wisconsin.gov/statutes/townlaw/toc>

Wisconsin Department of Justice – Public Records and Open Meetings Laws

[https://www.wisdoj.gov/Open%20Government/OML\\_guide.pdf](https://www.wisdoj.gov/Open%20Government/OML_guide.pdf)

Recognizing and Avoiding Conflicts of Interest- League of Wisconsin Municipalities

<https://www.lwm-info.org/1046/Pecuniary-Interest-FAQ-1>

The Wisconsin Public Records and Open Meetings Handbook, 7<sup>th</sup> edition 2022-State Bar of Wisconsin-  
If you wish to order it, 800-728-7788

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# The Town Plan Commission

## Fact Sheet No. 16

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*Prepared by James H. Schneider, J.D. Local Government Center  
Revised March 2001*

### Why Establish a Town Plan Commission?

#### *In General*

The simple answer to this question is that a town must establish a plan commission if it is to engage in certain planning and land use activities. Under the recently enacted Comprehensive Planning & Smart Growth Law (see following subheading), a town's actions and programs affecting land use must, by 2010, be consistent with the town's "comprehensive plan." To have a comprehensive plan under the new law, such plan must be developed by the town plan commission and adopted by the town board.

These are significant changes from prior law. While a town without a plan commission continues to have the implied authority to engage in less formal planning by the town board or a town plan committee<sup>1</sup>, such a plan would not be a "master plan" or "comprehensive plan" under the statutes as affected by the new law and would not serve as a basis for meeting the 2010 consistency requirement.

There are other reasons why a town might wish to establish a plan commission. For one, a town must establish a plan commission if it wishes to adopt a town subdivision or land division ordinance. Towns have the power to adopt such ordinances (even if they do not have zoning powers) as long as they have a "planning agency," which would be the town plan commission<sup>2</sup>. Secs. 236.02(12) & 236.45(2), Wis. Stats<sup>3</sup>. In addition, having a plan commission helps ensure citizen involvement and a certain formality, objectivity and rationality for the planning process through creation of a body with statutorily specified duties that is advisory to the town board.

### *The New Comprehensive Planning & Smart Growth Law*

Many towns will establish town plan commissions because of the new Comprehensive Planning & Smart Growth Law<sup>4</sup>. This law, as of January 1, 2010, requires that "any program or action of a local governmental unit that affects land use" must be consistent with that unit's "comprehensive plan." Sec. 66.1001(3). The law contains a long, non-inclusive list of such activities, which includes matters such as zoning, subdivision regulation and official mapping. A "local governmental unit" means a town, village, city, county and regional planning commission. Sec. 66.1001(1)(b). Many towns, therefore, will establish plan commissions so that they may engage in programs and activities relating to land use.

Wisconsin municipal law has long provided that the plan commission of a city, village or town with village powers prepares the unit's "master plan." Sec. 62.23(1)-(3). Under the new law a "comprehensive plan" is defined as the "master plan" of a city, village or town with village powers, the

county development plan, and the master plan for the region of a regional planning commission. Sec. 66.1001(1)(a).

Under the new law, the status of planning is elevated. In order to have a “comprehensive plan,” the plan prepared by the town plan commission and the town board must have nine specified elements and must be adopted in accordance with the law’s procedures. Sec. 66.1001(2) & (4). The new requirements emphasize involvement of the public and consideration of intergovernmental issues. Consistency requirements must be met. The elements of the plan must be consistent with each other and the land use activities and programs of the town, as of 2010, must be consistent with the plan. Secs. 66.1001(2)(i) & (3). The town board is now also required to “buy in” to the plan by enacting an ordinance that adopts the plan in order for the town to have a “comprehensive plan” under the law. In addition, the new law requires the plan to specify implementation measures and requires periodic updates. These new requirements mean that the plan will be a document that guides the town, rather than something that is used only sporadically or just gathers dust on a shelf. The use of the plan to guide the town’s actions will tend to make land use decisions more predictable and fair, and less controversial. The plan gives a reason to say “yes” or a reason to say “no” to a proposal.

## What is the Relationship Between the Plan Commission & the Town Board?

The relationship between the town plan commission and the town board is important. The town board consists of elected officials and is primarily a policy-making body charged with conducting the town’s affairs. The plan commission is an appointed body with the main duty of developing a plan and implementation measures for recommendation to the town board for adoption. The plan commission should therefore function in a more objective fashion than the town board, but must realize that in developing plans and ordinances it operates within a political system where the town board has the final say. Having one or more town board supervisors on the commission can serve as a bridge between the citizens on the commission and the town board.

Overall, the plan commission can be of great assistance to the town board by involving citizens and developing expertise in planning, which can be a time-consuming and controversial undertaking, thereby freeing the town board to carry out its other functions. The plan commission should not be viewed as an independent, dictatorial body. Instead, it is an appointed body whose policy-making function is advisory to the town board. If the town board wishes to give additional powers to the plan commission, beyond advisory powers, it may do so. For example, as discussed below, the town board could—but is not required to—allow the town plan commission to issue conditional use permits under town zoning under village powers and allow it to approve subdivision plats.

However, even though the plan commission’s policy-making function is advisory, it should be emphasized that there must be a good working relationship between the commission and the town board. This is needed because the existence of an adopted comprehensive plan and implementation measures depends upon both bodies—the plan commission to develop the proposals with public support and the town board to support the effort and ultimately adopt the legislation and implementation programs.

## What Authority is Necessary to Establish a Town Plan Commission?

### Statutory authority

The authority to set up a plan commission is found in the chapter of the Wisconsin Statutes that applies to cities. See sec. 62.23(1). This statute also applies to villages and to towns with village powers. Secs. 60.22(3) & 61.35. Under this authority, a town board may, like a city council or village board, establish a 7-member plan commission. Alternatively, a town board in a town under 2,500 population with village powers may set up a 5-member commission. Sec. 60.62(4).

### Village powers

A town board is authorized to exercise village powers by the town electors at the annual town meeting or at a special town meeting. Sec. 60.10(2)(c). This is a continuing grant of authority. (To determine if a town has village powers it may be necessary to check the minutes of the town meetings.) Village powers allow the town board to exercise powers relating to villages under ch. 61, "except those powers which conflict with statutes relating to towns and town boards." Sec. 60.22(3). The grant of village powers to the town board is recommended by the Wisconsin Towns Association staff. It should be stressed that this grant of authority does not make the town a village and does not give it such powers as to annex or regulate extraterritorial territory. Granting village powers to the town board does not obligate the town board to take on any new responsibilities. In general, village powers allow a town to act for the public health, safety and welfare of the town, using the broad powers granted to a village under sec. 61.34(1), unless, of course, a different procedure or requirement is set out for towns.

#### ***Establishing a Town Plan Commission***

- Annual or special town meeting grants village powers to town board, if the board does not already have such powers
- Town board adopts ordinance specifying
- Commission membership
  - 7-member commission, with at least 3 public members; pr
  - 5-members (an option for towns under 2,500 population) with at least one public member
  - Additional membership specification if desired
  - Commission powers & duties
- Town board chairperson appoints the presiding officer & members

### Planning authority under village powers

One of the village powers that a town board may exercise is village planning authority under sec. 61.35. This statute in turn provides that villages have the authority granted cities under sec. 62.23. This latter statute includes authority for cities to set up a plan commission and develop a master plan/comprehensive plan. The net result is that a town with village powers may establish a plan commission and develop a master plan, also known as a comprehensive plan.

## How is a Town Plan Commission Created & Set Up?

### Creation by ordinance

A plan commission is created by an ordinance of the town board Secs. 62.23(1) & 60.62(4). The ordinance may create a *7-member commission* or, if the town is under 2,500 population, a *5-member commission*.



## Appointment; membership

The town board chairperson appoints the members of the commission and chooses the presiding officer (commonly called the chair or chairperson) of the 7- member commission. The town board chairperson may appoint himself or herself and may appoint town elected and appointed officials to the commission. However, there must be at least 3 citizen members who are not town officials on the 7- member commission. (Care should be taken not to appoint town staff who might have conflicts of interest arising from the exercise of their town duties.) Citizen members are supposed to be people of “recognized experience and qualifications.” (If the town plan commission under the town’s ordinance will play a role in administering the law, care should be taken to avoid appointing citizens who will have more than occasional conflicts of interest.)

The statute provides that the governing body may by ordinance provide for the composition of the plan commission. The law formerly listed various members of the plan commission, but then allowed governing bodies by ordinance to provide for the composition of the commission. This latter authority was maintained in the law, even though the listing of members was deleted. Under the new law, a town ordinance could specify the membership of the commission, but should meet the minimum requirement concerning citizen members.

## Towns under 2,500 population

Towns under 2,500 may by ordinance establish a 5-member plan commission. Sec. 60.62(4)<sup>3</sup>. As with the 7-member commission, the town board chairperson selects the members and the presiding officer or chair. There must be at least one citizen member who is not a town official. The powers and duties applicable to the 7-member commission are also applicable to a 5-member commission. A town under 2,500 may, by ordinance, change from a 5- to a 7-member commission and vice versa.

## Terms

Plan commissioners are appointed for 3-year terms. When the law was recently amended, reference to the staggering of terms of office was deleted. Nevertheless, it seems reasonable for the ordinance to provide for the staggering of the terms of the initial members, so that there is not a complete turnover at the end of the 3-year term. Town board members of the commission may be appointed to serve for shorter terms, such as during their term of office on the town board. Sec. 66.0501(2).

# What are the Powers & Duties of a Town Plan Commission?

## Overview

The powers and duties of a plan commission are set out in the statutes and in any applicable town ordinances. Overall, the commission should promote good planning practices in the town and keep the public and town board well-informed on planning issues.

A major function of the plan commission is to prepare the master plan, known under the new law as a comprehensive plan, and amendments to this plan. The commission also prepares implementation measures and amendments and reviews matters referred to it for recommendation to the town board. (Although these duties are assigned to the plan commission, it should be noted that the commission does not necessarily actually itself do the detailed work involved. Instead, the commission has overall oversight and coordination responsibility to see that these tasks are accomplished.) In addition, the plan commission may be engaged in the administration or application of the law, if delegated this authority by the town board.

It should be stressed that towns vary considerably in their involvement in land use and in the authority given to their plan commissions. Some towns are like cities and villages in their approach to land use, while others may exercise little regulatory authority and use their plan merely to guide their actions under county zoning and to guide town decisions on such matters as providing services, infrastructure and parks.

## Rules and records

The plan commission may adopt rules for its transaction of business and must keep a record of its actions (which is subject to the public records law, secs.19.21-19.39). Sec. 62.23(2).

## General powers and duties

The plan commission in general has the powers necessary to perform its functions and promote planning. Sec. 62.23(4). It may hire staff and experts, subject to the town board's appropriation for the commission and local ordinances and town board resolutions. Sec. 62.23(1)(e). The commission may make reports and recommendations regarding the plan to the town board, other public officials and agencies, public utilities, organizations and the public. Public officials must furnish requested information to the commission, within a reasonable amount of time. In the performance of their duties, the commission and its employees may enter upon land, make examinations and surveys, and place and maintain necessary monuments and surveys.

## Planning

The town plan commission develops the town's master plan and amendments to it. Sec. 62.23(2) & (3). As explained above, under the new Comprehensive Planning & Smart Growth Law, the master plan is also a comprehensive plan. It has nine required elements and must be adopted in accordance with the

### *Commission Powers & Duties*

- In general, promote comprehensive planning in the town
- Prepare & recommend to town board
  - Master plan/ comprehensive plan (& amendments)
  - Ordinances & programs to implement the plan (& amendments)
- Review referred proposals for recommended to town board
- Hold hearings & make administrative determinations/ recommendations, if provided by town ordinance



law's procedures. These requirements emphasize broad, comprehensive planning, citizen participation and intergovernmental communication and coordination. Under these new requirements, the plan commission recommends by resolution the proposed comprehensive plan to the town board, and the town board enacts an ordinance that adopts the plan.

The commission's charge to develop the town's plan means that the commission will oversee and coordinate this important effort. A variety of players and bodies may be involved, in addition to the town plan commission and town board: an advisory or ad hoc land use committee representing a broad range of local interests; town staff; county bodies and staff; private consultants; the regional planning commission and its staff; neighboring communities and jurisdictions; state and perhaps federal agencies; the public and interested community groups.

## Zoning

Zoning is perhaps the most important plan implementation tool. It regulates the use of land, lot size and the height and bulk of structures, and provides standards for various types of development and activities. The plan commission plays an important part in the development and amendment of the zoning ordinance and may play a role in its administration.

### *Town Master Plan/ Comprehensive Plan (Town Bodies Involved)*

Town meeting (regular or special) grants village powers to town board (if town board does not already have such powers)



Town board by ordinance establishes town plan commission & town chairperson appoints members



Town plan commission oversees development of proposed plan & adopts resolution recommending it to town board



Town board reviews proposal & enacts an ordinance that adopts comprehensive plan

## Town ordinance development and amendment

If the town has zoning under its village powers, the town plan commission develops the proposed zoning ordinance, and amendments to it, and recommends these proposed ordinances to the town board. Secs. 60.22(3), 61.35 & 62.23(7). The hearing required for adoption or amendment of a zoning ordinance may be held by the town board or the plan commission, as the town board directs. Sec. 62.23(7)(d).

## Town ordinance administration (CUPs)

The town plan commission may also play a role in the administration of the town zoning ordinance under village powers. The town board may by ordinance grant the authority to issue special exception permits, also known as conditional use permits (CUPs), to itself or the town plan commission, instead of leaving this authority with the town zoning board of appeals (BOA). Sec. 62.23(7)(e). Many communities favor plan commission involvement in CUPs because they relate closely to planning issues and prefer not to involve the BOA, which is the body that hears zoning variance requests and appeals of administrative decisions. Accordingly, the ordinance may provide that the plan commission makes a recommendation on CUP applications to the town board, which has final authority over the issuance of CUPs (with review of the town board's decision in circuit court). Alternatively, the ordinance may authorize the plan commission to issue CUPs and specify that local review of this decision is to the town board (with review of the town board's decision in circuit court.)

## Involvement in county zoning

The town plan commission may play a role in advising the town board on county zoning matters that affect the town under county general zoning and under special zoning ordinances, such as shoreland and floodplain zoning. Secs. 59.69, 59.692 & 87.30. While the statutes do not specifically mention the town plan commission in these activities, the town board may wish to take advantage of the town plan commission's expertise in town planning matters and seek that body's recommendation. Town actions under county zoning include: the decision to go under county general zoning; town board petitions to amend county zoning; town board exercise of disapproval authority under general county zoning over proposed amendments; and town testimony and recommendations to county bodies considering applications for zoning amendments, variances and conditional use permits (also known as special exception permits).

## Official map

The official map must be distinguished from the zoning map. An official map is a regulatory tool that shows specified infrastructure such as streets, highways, parks, railroads and waterways that are part of a comprehensive surface water drainage plan. Sec. 62.23(6). The official map may show the exterior lines of planned new infrastructure specified in the statute, and planned expansions or closing or narrowing of existing infrastructure. It provides a way to prevent development on land planned for public uses. The statute provides that the map is prepared by the governing body and that amendments to the official map are referred to the plan commission for report within 60 days of reference. However, the infrastructure and features shown on the map, and especially the planned changes, relate closely to the town's master plan/ comprehensive plan, whose 9 elements encompass the listed features. In light of this, the town plan commission should be the body that develops and recommends the official map (and amendments) to the town board for adoption as an ordinance.

## Subdivision & land division review

The platting of subdivisions is governed by ch. 236. This chapter contains surveying, layout and other technical requirements. Under this chapter, proposed subdivisions are referred to communities, counties and state agencies for review of compliance with ch. 236, local ordinances and the master plan or comprehensive plan. Secs. 236.10-236.13. Communities may adopt subdivision and land division ordinances to further regulate how the land is divided and improved. Sec. 236.45. These ordinances can provide that site suitability, site design and environmental issues be addressed. They may require the subdivider to install on-site improvements, such as streets and sidewalks, and may require the dedication of parklands or fees in lieu of dedication. They may also ensure the availability of public services, such as sewer and water, before the land may be developed.

The town plan commission may, as with other implementation measures, develop and propose a subdivision or other land division ordinance to the town board for adoption. Regardless of whether the town has such an ordinance, proposed plats under ch. 236 are referred to the plan commission for review and recommendation to the town board. Sec. 62.23(5). The town board may delegate preliminary and final approval of subdivision plats and other proposed land divisions to the town plan commission, or may keep that authority for itself, after receiving a recommendation from the commission. However, if the town board does delegate this approval authority to the commission, final plats dedicating streets, highways and other lands must be approved by the town board. Sec. 236.10(3).

## Referrals

The statutes require a number of matters to be referred to the plan commission for review and recommendation to the governing body. For example, the location and design of public buildings and the location or abandonment of parks and streets, as well as the proposed adoption (or amendment) of town zoning under village powers and of a town subdivision ordinance, must all be referred to the town plan commission for its review. See especially sec. 62.23 (5) & “Referrals” box<sup>6</sup>. The plan commission has 30 days to report on the referred matter to the town board, unless the town board or a statute provides for a longer review period. The town board may not act on a referred matter to the town board, unless the town board or a statute provides for a longer review period. The town board may not act on a referred matter during the review period. Failure to refer a matter specified for plan commission review may result in a court voiding the town board’s final action on the matter<sup>7</sup>. In addition to matters required to be referred to the plan commission, the town board may refer to the plan commission, the town board may refer other matters as well. For example, while a proposed boundary agreement between the town and a city or village under a cooperative plan, proposed city or village extraterritorial zoning of town territory or a proposed airport zoning ordinance do not specifically require referral to the town plan commission, these are important land use matters that should be referred to that body. Secs. 62.23(7a), 66.0307 & 114.135(2).

## Commissioners as officials

Finally, it should be noted that members of a town plan commission are considered town officials. Commissioners, like other local officials, take an oath of office swearing to support the constitution and to “faithfully discharge” their duties of office to the best of their ability.<sup>8</sup> As local public officials, they are subject to laws such as the open meetings and public records laws<sup>9</sup>, and ethics and conflicts of interest laws. They are also protected by certain laws when they exercise their official duties<sup>10</sup>.

While it is beyond the scope of this paper to elaborate on these matters, an important distinction should be made. When members of a town plan commission are applying their ordinances and the statutes to specific applications, they are subject to stricter laws than when they are making public policy, such as preparing a plan. When they are acting in such a “quasi-judicial capacity,” as when they review subdivision plats or consider applications for conditional use permits under the zoning law, they must follow concepts of fairness and due process that are in addition to the general ethical constraints found in such laws as the Code of Ethics for Local Officials (sec. 19.59).

### *Referrals to Commission*

- Location & architectural design of any public building
- Location of any statue or other memorial
- Location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for
  - Park, playground
  - Any street, alley or other public way
  - Airport
  - Area for parking vehicles
  - Other memorial or public grounds
- Location, extension, abandonment or authorization for any public utility whether publicly or privately owned
- All plats over which the town has jurisdiction under ch. 235, Stats.
- Location, character & extent or acquisition, leasing or sale of lands for public or semipublic housing, slum clearance, relief of congestion, or vacation camps for children
- Proposed ordinances, amendments or repeals under sec. 62.23 (e.g., the master plan/ comprehensive plan, town zoning under village powers, official map ordinances) & sec. 236.45 (subdivision or land division ordinances)
- Other matters specified by statute or ordinance for referral (e.g., proposed business improvement districts, group homes, etc.), or referred at discretion of town board

In such proceedings, in addition to following notice and hearing requirements, plan commissioners must be unbiased and apply the existing legal standards to the evidence in the record. Decisions should not be based on personal opinion or information obtained outside of the record. Instead, quasi-judicial determinations must be made by applying the legal standards of the applicable statutes and ordinances to the evidence in the record, which typically consists of the application, submitted materials such as reports or letters, and testimony at public hearings.

## Acknowledgements

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## Endnotes

<sup>1</sup> Town boards have no explicit general planning authority under ch. 60 (towns) of the Wisconsin Statutes. Towns have the powers conferred on them by statute or necessarily implied therefrom. *Pugnier v. Ramharter*, 275 Wis. 70 (1957); *Town of Clearfield v. Cushman*, 150 Wis. 2d 10 (Ct. App. 1988). Town general planning authority may be implied from: town zoning and other land use authority; the town board role when subject to county zoning under sec. 59.69 (e.g., town rezoning disapprovals); and authority granted to towns in ch. 60 regarding such matters as acquiring land and constructing public infrastructure and facilities. Towns exercising village powers, however, have the statutory planning power of cities and villages. Secs. 60.22(3), 61.35 & 62.23, Stats.

<sup>2</sup> A "town planning agency" may also be the "town zoning committee" under sec. 60.61(4). Section 60.61(4) provides that a town may exercise zoning authority under it if the town has petitioned the county to exercise general county zoning and the county does not so act. This limited zoning authority is used by few towns. Almost all towns that have town zoning do so under sec. 60.62 (town zoning under village powers). The new Comprehensive Planning & Smart Growth Law does not even cross-reference or mention sec. 60.61 town zoning. Instead, a comprehensive plan under the new law is a town master plan, which is adopted under village powers. Secs. 60.22(3), 61.35, 62.23(1)-(3) & 66.1001, Stats.

<sup>3</sup> All statutory references are to the Wisconsin Statutes, and are hereafter shown in the form "Sec. 236.02(13)." The statutes cited in this paper are as amended and effective to date.

<sup>4</sup> 1999 Wisconsin Act 9 (the budget act), as affected by 1999 Wisconsin Act 148 (often referred to as the "Smart Growth trailer bill").

<sup>5</sup> A strict reading of sec. 60.62(4) would limit the 5-member option to towns under 2,500 that engage in zoning under village powers. This strict reading was not intended by the Wisconsin Towns Association, and the actions of a 5-member commission of a town without town zoning under village powers would in all probability not be susceptible to challenge on this basis.

<sup>6</sup> In addition to sec. 62.23(5), a number of statutes require referral of proposals to the plan commission. Some of these

include: sec. 48.68(3) (child welfare agency or group home); sec. 50.03(4) (community-based residential facility); sec.

62.23(7)(d) (zoning ordinance); sec. 66.0905 (designation of pedestrian malls); sec. 66.1109 (business improvement districts); sec. 66.1007 (architectural conservancy districts); and sec. 236.45(4) (subdivision ordinance).

<sup>7</sup> See *Scanlon v. Menasha*, 16 Wis. 2d 437 (1962) (sale of playground void for non-referral). Compare *Rath v. Two Rivers Community Hosp.*, 160 Wis. 2d 853 (Ct. App. 1991) (referral of sale of city-owned hospital not necessary because term "other public grounds" in statute refers to land used for transportation and recreation).

<sup>8</sup> Secs. 19.01 & 60.31. The oath must be taken and filed within 5 days of notice of appointment and before beginning the duties of office.

<sup>9</sup> Secs. 19.21-19.39 & 19.81-98. Fact Sheets on these laws may be accessed from the Local Government Center website ([localgovernment.extension.wisc.edu](http://localgovernment.extension.wisc.edu)).

<sup>10</sup> Key ethics and conflicts laws include the following: Code of Ethics for Local Government Officials (secs. 19.42, 19.58 &

19.59); limitations on "double-dipping" in compensation for serving on both the town board and town plan commission,

secs. 60.323 & 66.0501(2); Misconduct in Office (sec. 946.12); and Private Interests in Public Contracts (sec. 946.13).

Claims against local officials are limited by secs. 345.05 & 893.80; and local officials' indemnification and legal representation

are covered by secs. 895.35 & 895.46. The Wisconsin Ethics Board website has fact sheets and other information on ethics matters.



## **2025 PLANNING COMMISSION DATES**

Wednesdays, 6:30 P.M.

<b>INITIAL REQUEST</b>	<b>DECISION MAKING</b>
*JANUARY 8	*JANUARY 22
FEBRUARY 5	FEBRUARY 19
MARCH 5	MARCH 19
APRIL 2	APRIL 16
MAY 7	MAY 21
JUNE 4	JUNE 18
*JULY 9	*JULY 23
AUGUST 6	AUGUST 20
SEPTEMBER 3	SEPTEMBER 17
OCTOBER 1	OCTOBER 15
NOVEMBER 5	NOVEMBER 19
DECEMBER 3	DECEMBER 17

**\*DATE CHANGE DUE TO SCHEDULING CONFLICT**