

WISCONSIN STATUTES CHAPTER 59: COUNTIES

SUBCHAPTER VII: LAND USE, INFORMATION AND REGULATION, ENVIRONMENTAL PROTECTION, SURVEYS, PLANNING AND ZONING

- 59.69 Planning and zoning authority.
- 59.691 Required notice on certain approvals.
- 59.692 Zoning of shorelands on navigable waters.
- 59.693 Construction site erosion control and storm water management zoning.
- 59.694 County zoning, adjustment board.
- 59.696 Zoning; filing fees.
- 59.697 Fees for zoning appeals.
- 59.698 Zoning, building inspector.
- 59.70 Environmental protection and land use.
- 59.71 Special counties; record keeping.
- 59.72 Land information.
- 59.73 Surveys; expressing bearings, subdividing sections.
- 59.74 Perpetuation of section corners, landmarks.
- 59.75 Certificates and records as evidence.
- 59.76 Registration of farms.
- 59.78 Special counties; classification of claims.

59.69 Planning and zoning authority.

(1) Purpose. It is the purpose of this section to promote the public health, safety, convenience and general welfare; to encourage planned and orderly land use development; to protect property values and the property tax base; to permit the careful planning and efficient maintenance of highway systems; to ensure adequate highway, utility, health, educational and recreational facilities; to recognize the needs of agriculture, forestry, industry and business in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to preserve wetlands; to conserve soil, water and forest resources; to protect the beauty and amenities of landscape and man-made developments; to provide healthy surroundings for family life; and to promote the efficient and economical use of public funds. To accomplish this purpose the board may plan for the physical development and zoning of territory within the county as set forth in this section and shall incorporate therein the master plan adopted under s. 62.23 (2) or (3) and the official map of any city or village in the county adopted under s. 62.23 (6).

(2) Planning and zoning agency or commission.

(a)

1. Except as provided under subd. 2., the board may create a planning and zoning committee as a county board agency or may create a planning and zoning commission consisting wholly or partially of persons who are not members of the board, designated the county zoning agency. In lieu of creating a committee or commission for this purpose, the board may designate a previously established committee or commission as the county zoning agency, authorized to act in all matters pertaining to county planning and zoning.

2. If the board in a county with a county executive authorizes the creation of a county planning and zoning commission, designated the county zoning agency, the county executive shall appoint the commission, subject to confirmation by the board.

3. If a county planning and zoning commission is created under subd. 2., the county executive may appoint, for staggered 3-year terms, 2 alternate members of the commission, who are subject to confirmation by the board. Annually, the county executive shall designate one of the alternate members as first alternate and the other as 2nd alternate. The first alternate shall act, with full power, only when a member of the commission refuses to vote because of a conflict of interest or when a member is absent. The 2nd alternate shall act only when the first alternate refuses to vote because of a conflict of interest or is absent, or if more than one member of the commission refuses to vote because of a conflict of interest or is absent.

(b) From its members, the county zoning agency shall elect a chairperson whose term shall be for 2 years, and the county zoning agency may create and fill other offices.

(bm) The head of the county zoning agency appointed under sub. (10) (b) 2. shall have the administrative powers and duties specified for the county zoning agency under this section, and the county zoning agency shall be only a policy-making body determining the broad outlines and principles governing such administrative powers and duties and shall be a quasi-judicial body with decision-making power that includes but is not limited to conditional use, planned unit development and rezoning. The building inspector shall enforce all laws, ordinances, rules and regulations under this section.

(c) Subject to change by the board, the county zoning agency may adopt such rules and regulations governing its procedure as it considers necessary or advisable. The county zoning agency shall keep a record of its planning and zoning studies, its resolutions, transactions, findings and determinations.

(cm) In addition to the members who serve on, or are appointed to, a planning and zoning committee, commission, or agency under par. (a), the committee, commission, or agency shall also include, as a nonvoting member, a representative from a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in the county, if the base's or installation's commanding officer appoints such a representative.

(d) The county may accept, review and expend funds, grants and services and may contract with respect thereto and may provide such information and reports as may be necessary to secure such financial aid and services, and within such funds as may be made available, the county zoning agency may employ, or contract for the services of, such professional planning technicians and staff as are considered necessary for the discharge of the duties and responsibilities of the county zoning agency.

(e) Wherever a public hearing is specified under this section, the hearing shall be conducted by the county zoning agency in the county courthouse or in such other appropriate place as may be selected by the county zoning agency. The county zoning agency shall give notice of the public hearing by publication in the county as a class 2 notice under ch. 985, and shall consider any comments made, or submitted by, the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the county.

(f) Whenever a county development plan, part thereof or amendment thereto is adopted by, or a zoning ordinance or amendment thereto is enacted by, the board, a duplicate copy shall be certified by the clerk and sent to the municipal clerks of the municipalities affected thereby, and also to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the county.

(g) Neither the board nor the county zoning agency may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying,

extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

(3) The county development plan.

(a) The county zoning agency may direct the preparation of a county development plan or parts of the plan for the physical development of the unincorporated territory within the county and areas within incorporated jurisdictions whose governing bodies by resolution agree to having their areas included in the county's development plan. The plan may be adopted in whole or in part and may be amended by the board and endorsed by the governing bodies of incorporated jurisdictions included in the plan. The county development plan, in whole or in part, in its original form or as amended, is hereafter referred to as the development plan. Beginning on January 1, 2010, or, if the county is exempt under s. 66.1001 (3m), the date under s. 66.1001 (3m) (b), if the county engages in any program or action described in s. 66.1001 (3), the development plan shall contain at least all of the elements specified in s. 66.1001 (2).

(b) The development plan shall include the master plan, if any, of any city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any, of such city or village, that was adopted under s. 62.23 (6) in the county, without change.

(c) The development plan may be in the form of descriptive material, reports, charts, diagrams or maps. Each element of the development plan shall describe its relationship to other elements of the plan and to statements of goals, objectives, principles, policies or standards.

(d) The county zoning agency shall hold a public hearing on the development plan before approving it. After approval of the plan the county zoning agency shall submit the plan to the board for its approval and adoption. The plan shall be adopted by resolution and when adopted it shall be certified as provided in sub. (2) (f). The development plan shall serve as a guide for public and private actions and decisions to assure the development of public and private property in appropriate relationships.

(e) A master plan adopted under s. 62.23 (2) and (3) and an official map that is established under s. 62.23 (6) shall control in unincorporated territory in a county affected thereby, whether or not such action occurs before the adoption of a development plan.

(4) Extent of power. For the purpose of promoting the public health, safety and general welfare the board may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for each such district as the board considers best suited to carry out the purposes of this section. The board may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The powers granted by this section shall be exercised through an ordinance which may, subject to sub. (4e), determine, establish, regulate and restrict:

(a) The areas within which agriculture, forestry, industry, mining, trades, business and recreation may be conducted, except that no ordinance enacted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d).

(b) The areas in which residential uses may be regulated or prohibited.

(c) The areas in and along, or in or along, natural watercourses, channels, streams and creeks in which trades or industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.

(d) Trailer or tourist camps, motels, and manufactured and mobile home communities.

- (e) Designate certain areas, uses or purposes which may be subjected to special regulation.
- (f) The location of buildings and structures that are designed for specific uses and designation of uses for which buildings and structures may not be used or altered.
- (g) The location, height, bulk, number of stories and size of buildings and other structures.
- (h) The location of roads and schools.
- (i) Building setback lines.
- (j) The density and distribution of population.
- (k) The percentage of a lot which may be occupied, size of yards, courts and other open spaces.
- (L) Places, structures or objects with a special character, historic interest, aesthetic interest or other significant value, historic landmarks and historic districts.
- (m) Burial sites, as defined in s. 157.70 (1) (b).

(4c) Construction site ordinance limits. Except as provided in s. 101.1206 (5m), an ordinance that is enacted under sub. (4) may only include provisions that are related to construction site erosion control if those provisions are limited to sites where the construction activities do not include the construction of a building.

(4d) Antenna facilities. The board may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

- (a) The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.
- (b) The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.
- (c) The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10% of the purchase price and installation fee of the antenna and associated equipment.

(4e) Migrant labor camps. The board may not enact an ordinance or adopt a resolution that interferes with any of the following:

- (a) Any repair or expansion of migrant labor camps, as defined in s. 103.90 (3). An ordinance or resolution of the county that is in effect on September 1, 2001, and that interferes with any construction, repair, or expansion of migrant labor camps is void.
- (b) The construction of new migrant labor camps, as defined in s. 103.90 (3), that are built on or after September 1, 2001, on property that is adjacent to a food processing plant, as defined in s. 97.29 (1) (h), or on property owned by a producer of vegetables, as defined in s. 100.235 (1) (g), if the camp is located on or contiguous to property on which vegetables are produced or adjacent to land on which the producer resides.

(4f) Amateur radio antennas. The board may not enact an ordinance or adopt a resolution on or after

April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

(b) The ordinance or resolution reasonably accommodates amateur radio communications.

(4g) Airport areas. In a county which has created a county zoning agency under sub. (2) (a), the county's development plan shall include the location of any part of an airport, as defined in s. 62.23 (6) (am) 1. a., that is located in the county and of any part of an airport affected area, as defined in s. 62.23 (6) (am) 1. b., that is located in the county.

(4h) Payday lenders.

(a) *Definitions.* In this subsection:

1. "Licensee" has the meaning given in s. 138.14 (1) (i).
2. "Payday lender" means a business, owned by a licensee, that makes payday loans.
3. "Payday loan" has the meaning given in s. 138.14 (1) (k).

(b) *Limits on locations of payday lenders.* Except as provided in par. (c), no payday lender may operate in a county unless it receives a permit to do so from the county zoning agency, and the county zoning agency may not issue a permit to a payday lender if any of the following applies:

1. The payday lender would be located within 1,500 feet of another payday lender.
2. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.

(c) *Exceptions.*

1. Paragraph (b) only applies in the unincorporated parts of the county which have not adopted a zoning ordinance as authorized under s. 60.62 (1).
2. A county may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in par. (b).
3. If a county has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the county may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of par. (b).
4. Notwithstanding the provisions of subd. 3., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of par. (b), the payday lender may continue to operate from that location notwithstanding the provisions of par. (b).

(4m) Historic preservation. A county, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance any place, structure or object with a special character, historic interest, aesthetic interest or other significant value, for the purpose of preserving the place, structure or object and its significant

characteristics. The county may create a landmarks commission to designate historic landmarks and establish historic districts. The county may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

(5) Formation of zoning ordinance; procedure.

(a) When the county zoning agency has completed a draft of a proposed zoning ordinance, it shall hold a public hearing thereon, following publication in the county of a class 2 notice, under ch. 985. If the proposed ordinance has the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the ordinance or a description of the property affected by the ordinance and a statement that a map may be obtained from the zoning agency. After such hearing the agency may make such revisions in the draft as it considers necessary, or it may submit the draft without revision to the board with recommendations for adoption. Proof of publication of the notice of the public hearing held by such agency shall be attached to its report to the board.

(b) When the draft of the ordinance, recommended for enactment by the zoning agency, is received by the board, it may enact the ordinance as submitted, or reject it, or return it to the agency with such recommendations as the board may see fit to make. In the event of such return subsequent procedure by the agency shall be as if the agency were acting under the original directions. When enacted, duplicate copies of the ordinance shall be submitted by the clerk by registered mail to each town clerk for consideration by the town board.

(c) A county ordinance enacted under this section shall not be effective in any town until it has been approved by the town board. If the town board approves an ordinance enacted by the county board, under this section, a certified copy of the approving resolution attached to one of the copies of such ordinance submitted to the town board shall promptly be filed with the county clerk by the town clerk. The ordinance shall become effective in the town as of the date of the filing, which filing shall be recorded by the county clerk in the clerk's office, reported to the town board and the county board, and printed in the proceedings of the county board. The ordinance shall supersede any prior town ordinance in conflict therewith or which is concerned with zoning, except as provided by s. 60.62.

(d) The board may by a single ordinance repeal an existing county zoning ordinance and reenact a comprehensive revision thereto in accordance with this section. "Comprehensive revision", in this paragraph, means a complete rewriting of an existing zoning ordinance which changes numerous zoning provisions and alters or adds zoning districts. The comprehensive revision may provide that the existing ordinance shall remain in effect in a town for a period of up to one year or until the comprehensive revision is approved by the town board, whichever period is shorter. If the town board fails to approve the comprehensive revision within a year neither the existing ordinance nor the comprehensive revision shall be in force in that town. Any repeal and reenactment prior to November 12, 1965, which would be valid under this paragraph is hereby validated.

(e) The board may amend an ordinance or change the district boundaries. The procedure for such amendments or changes is as follows:

1. A petition for amendment of a county zoning ordinance may be made by a property owner in the area to be affected by the amendment, by the town board of any town in which the ordinance is in effect; by any member of the board or by the agency designated by the board to consider county zoning matters as provided in sub. (2) (a). The petition shall be filed with the clerk who shall immediately refer it to the county zoning agency for its consideration, report and recommendations. Immediate notice of the petition shall be sent to the county supervisor of any affected district. A report of all petitions referred under this paragraph shall be made to the county board at its next succeeding meeting.

2. Upon receipt of the petition by the agency it shall call a public hearing on the petition. Notice of the

time and place of the hearing shall be given by publication in the county of a class 2 notice, under ch. 985. If an amendment to an ordinance, as described in the petition, has the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the amendment or a description of the property affected by the amendment and a statement that a map may be obtained from the zoning agency. A copy of the notice shall be mailed by registered mail to the town clerk of each town affected by the proposed amendment at least 10 days prior to the date of such hearing. If the petition is for any change in an airport affected area, as defined in s. 62.23 (6) (am) 1. b., the agency shall mail a copy of the notice to the owner or operator of the airport bordered by the airport affected area.

3. Except as provided under subd. 3m., if a town affected by the proposed amendment disapproves of the proposed amendment, the town board of the town may file a certified copy of the resolution adopted by the board disapproving of the petition with the agency before, at or within 10 days after the public hearing. If the town board of the town affected in the case of an ordinance relating to the location of boundaries of districts files such a resolution, or the town boards of a majority of the towns affected in the case of all other amendatory ordinances file such resolutions, the agency may not recommend approval of the petition without change, but may only recommend approval with change or recommend disapproval.

3m. A town may extend its time for disapproving any proposed amendment under subd. 3. by 20 days if the town board adopts a resolution providing for the extension and files a certified copy of the resolution with the clerk of the county in which the town is located. The 20-day extension shall remain in effect until the town board adopts a resolution rescinding the 20-day extension and files a certified copy of the resolution with the clerk of the county in which the town is located.

4. As soon as possible after the public hearing, the agency shall act, subject to subd. 3., on the petition either approving, modifying and approving, or disapproving it. If its action is favorable to granting the requested change or any modification thereof, it shall cause an ordinance to be drafted effectuating its determination and shall submit the proposed ordinance directly to the board with its recommendations. If the agency after its public hearing recommends denial of the petition it shall report its recommendation directly to the board with its reasons for the action. Proof of publication of the notice of the public hearing held by the agency and proof of the giving of notice to the town clerk of the hearing shall be attached to either report. Notification of town board resolutions filed under subd. 3. shall be attached to either such report.

5. Upon receipt of the agency report the board may enact the ordinance as drafted by the zoning agency or with amendments, or it may deny the petition for amendment, or it may refuse to deny the petition as recommended by the agency in which case it shall rerefer the petition to the agency with directions to draft an ordinance to effectuate the petition and report the ordinance back to the board which may then enact or reject the ordinance.

5g. If a protest against a proposed amendment is filed with the clerk at least 24 hours prior to the date of the meeting of the board at which the report of the zoning agency under subd. 4. is to be considered, duly signed and acknowledged by the owners of 50% or more of the area proposed to be altered, or by abutting owners of over 50% of the total perimeter of the area proposed to be altered included within 300 feet of the parcel or parcels proposed to be rezoned, action on the ordinance may be deferred until the zoning agency has had a reasonable opportunity to ascertain and report to the board as to the authenticity of the ownership statements. Each signer shall state the amount of area or frontage owned by that signer and shall include a description of the lands owned by that signer. If the statements are found to be true, the ordinance may not be enacted except by the affirmative vote of three-fourths of the members of the board present and voting. If the statements are found to be untrue to the extent that the required frontage or area ownership is not present the protest may be disregarded.

5m. If a proposed amendment under this paragraph would make any change in an airport affected

area, as defined under s. 62.23 (6) (am) 1. b., and the owner or operator of the airport bordered by the airport affected area files a protest against the proposed amendment with the clerk at least 24 hours prior to the date of the meeting of the board at which the report of the zoning agency under subd. 4. is to be considered, no ordinance which makes such a change may be enacted except by the affirmative vote of two-thirds of the members of the board present and voting.

6. If an amendatory ordinance makes only the change sought in the petition and if the petition was not disapproved prior to, at or within 10 days under subd. 3. or 30 days under subd. 3m., whichever is applicable, after the public hearing by the town board of the town affected in the case of an ordinance relating to the location of district boundaries or by the town boards of a majority of the towns affected in the case of all other amendatory ordinances, it shall become effective on passage. The county clerk shall record in the clerk's office the date on which the ordinance becomes effective and notify the town clerk of all towns affected by the ordinance of the effective date and also insert the effective date in the proceedings of the county board. Any other amendatory ordinance when enacted shall within 7 days thereafter be submitted in duplicate by the county clerk by registered mail to the town clerk of each town in which lands affected by the ordinance are located. If after 40 days from the date of the enactment a majority of the towns have not filed certified copies of resolutions disapproving the amendment with the county clerk, or if, within a shorter time a majority of the towns in which the ordinance is in effect have filed certified copies of resolutions approving the amendment with the county clerk, the amendment shall be in effect in all of the towns affected by the ordinance. Any ordinance relating to the location of boundaries of districts shall within 7 days after enactment by the county board be transmitted by the county clerk by registered mail only to the town clerk of the town in which the lands affected by the change are located and shall become effective 40 days after enactment of the ordinance by the county board unless such town board prior to such date files a certified copy of a resolution disapproving of the ordinance with the county clerk. If such town board approves the ordinance, the ordinance shall become effective upon the filing of the resolution of the town board approving the ordinance with the county clerk. The clerk shall record in the clerk's office the date on which the ordinance becomes effective and notify the town clerk of all towns affected by such ordinance of such effective date and also make such report to the county board, which report shall be printed in the proceedings of the county board.

7. When any lands previously under the jurisdiction of a county zoning ordinance have been finally removed from such jurisdiction by reason of annexation to an incorporated municipality, and after the regulations imposed by the county zoning ordinance have ceased to be effective as provided in sub. (7), the board may, on the recommendation of its zoning agency, enact amendatory ordinances that remove or delete the annexed lands from the official zoning map or written descriptions without following any of the procedures provided in subds. 1. to 6., and such amendatory ordinances shall become effective upon enactment and publication. A copy of the ordinance shall be forwarded by the clerk to the clerk of each town in which the lands affected were previously located. Nothing in this paragraph shall be construed to nullify or supersede s. 66.1031.

(f) The county zoning agency shall maintain a list of persons who submit a written request to receive notice of any proposed ordinance or amendment that affects the allowable use of the property owned by the person. If the county zoning agency completes a draft of a proposed zoning ordinance under par. (a) or if the agency receives a petition under par. (e) 2., the agency shall send a notice, which contains a copy of the proposed ordinance or petition, to each person on the list whose property, the allowable use of which, may be affected by the proposed ordinance or amendment. The notice shall be by mail or in any reasonable form that is agreed to by the person and the agency. The agency may charge each person on the list who receives a notice a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this paragraph may take effect even if the agency fails to send the notice that is required by this paragraph.

(6) Optional additional procedures. Nothing in this section shall be construed to prohibit the zoning agency, the board or a town board from adopting any procedures in addition to those prescribed in this

section and not in conflict therewith. Such procedures may, but are not required to, provide for public hearings before the county board. The public hearing provided by sub. (5) (a) and (e) 2. is deemed to be sufficient for the requirements of due process whether or not the county board holds a further public hearing thereafter.

(7) Continued effect of ordinance. Whenever an area which has been subject to a county zoning ordinance petitions to become part of a city or village, the regulations imposed by the county zoning ordinance shall continue in effect, without change, and shall be enforced by the city or village until the regulations have been changed by official action of the governing body of the city or village, except that in the event an ordinance of annexation is contested in the courts, the county zoning shall prevail and the county shall have jurisdiction over the zoning in the area affected until ultimate determination of the court action.

(8) Exchange of tax deeded lands. When a county acquires lands by tax deeds, the board may exchange such lands for other lands in the county for the purpose of promoting the regulation and restriction of agricultural and forestry lands and may exchange such lands for other lands for the purpose of creating a park or recreational area.

(9) Zoning of county-owned lands.

(a) The county board may by ordinance zone and rezone lands owned by the county without necessity of securing the approval of the town boards of the towns wherein the lands are situated and without following the procedure outlined in sub. (5), provided that the county board shall give written notice to the town board of the town wherein the lands are situated of its intent to so rezone and shall hold a public hearing on the proposed rezoning ordinance and give notice of the hearing by posting in 5 public places in the town.

(b) This subsection does not apply to land that is subject to a town zoning ordinance which is purchased by the county for use as a solid or hazardous waste disposal facility or hazardous waste storage or treatment facility, as these terms are defined under s. 289.01.

(10) Nonconforming uses.

(a) An ordinance enacted under this section may not prohibit the continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure, or fixture is used at the time that the ordinances take effect, but the alteration of, or addition to, or repair in excess of 50 percent of its assessed value of any existing building, premises, structure, or fixture for the purpose of carrying on any prohibited trade or new industry within the district where such buildings, premises, structures, or fixtures are located, may be prohibited. The continuance of the nonconforming use of a temporary structure may be prohibited. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

(b)

1. Except as provided under subd. 2., the board shall designate an officer to administer the zoning ordinance, who may be the secretary of the zoning agency, a building inspector appointed under s. 59.698 or other appropriate person.

2. Notwithstanding subd. 1. and s. 59.698, in a county with a county zoning agency and a county executive or county administrator, the county executive or county administrator shall appoint and supervise the head of the county zoning agency and the county building inspector, in separate or combined positions. The appointment is subject to confirmation by the board unless the board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system

competitive examination procedure established under s. 59.52 (8) or ch. 63. The board, by resolution or ordinance, may provide that, notwithstanding s. 17.10 (6), the head of the county zoning agency and the county building inspector, whether serving in a separate or combined position, if appointed under this subdivision, may not be removed from his or her position except for cause.

3. The officer designated under subd. 1. or 2. shall cause a record to be made immediately after the enactment of an ordinance or amendment thereto, or change in district boundary, approved by the town board, of all lands, premises and buildings in the town used for purposes not conforming to the regulations applicable to the district in which they are situated. The record shall include the legal description of the lands, the nature and extent of the uses therein, and the names and addresses of the owner or occupant or both. Promptly on its completion the record shall be published in the county as a class 1 notice, under ch. 985. The record, as corrected, shall be on file with the register of deeds 60 days after the last publication and shall be prima facie evidence of the extent and number of nonconforming uses existing on the effective date of the ordinance in the town. Corrections before the filing of the record with the register of deeds may be made on the filing of sworn proof in writing, satisfactory to the officer administering the zoning ordinance.

(c) The board shall prescribe a procedure for the annual listing of nonconforming uses, discontinued or created, since the previous listing and for all other nonconforming uses. Discontinued and newly created nonconforming uses shall be recorded with the register of deeds immediately after the annual listing.

(d) Paragraphs (b) and (c) shall not apply to counties issuing building permits or occupancy permits as a means of enforcing the zoning ordinance or to counties which have provided other procedures for this purpose.

(e)

1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (a), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.

2. Subject to par. (a), an ordinance enacted under this section may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(10m) Restoration of certain nonconforming structures.

(a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(b) An ordinance enacted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(11) Procedure for enforcement of county zoning ordinance. The board shall prescribe rules,

regulations and administrative procedures, and provide such administrative personnel as it considers necessary for the enforcement of this section, and all ordinances enacted in pursuance thereof. The rules and regulations and the districts, setback building lines and regulations authorized by this section, shall be prescribed by ordinances which shall be declared to be for the purpose of promoting the public health, safety and general welfare. The ordinances shall be enforced by appropriate forfeitures. Compliance with such ordinances may also be enforced by injunctive order at the suit of the county or an owner of real estate within the district affected by the regulation.

(12) Prior ordinances effective. Nothing in this section shall invalidate any county zoning ordinance enacted under statutes in effect before July 20, 1951.

(13) Construction of section. The powers granted in this section shall be liberally construed in favor of the county exercising them, and this section shall not be construed to limit or repeal any powers now possessed by a county.

(14) Limitation of actions. A landowner, occupant or other person who is affected by a county zoning ordinance or amendment, who claims that the ordinance or amendment is invalid because procedures prescribed by the statutes or the ordinance were not followed, shall commence an action within the time provided by s. 893.73 (1), except this subsection and s. 893.73 (1) do not apply unless there has been at least one publication of a notice of a zoning hearing in a local newspaper of general circulation and unless there has been held a public hearing on the ordinance or amendment at the time and place specified in the notice.

(15) Community and other living arrangements. For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any municipality, shall be subject to the following criteria:

(a) No community living arrangement may be established after March 28, 1978, within 2,500 feet, or any lesser distance established by an ordinance of a municipality, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the municipality. Two community living arrangements may be adjacent if the municipality authorizes that arrangement and if both facilities comprise essential components of a single program.

(b)

1. Community living arrangements shall be permitted in each municipality without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or 1% of the municipality's population, whichever is greater. When the capacity of the community living arrangements in the municipality reaches that total, the municipality may prohibit additional community living arrangements from locating in the municipality. In any municipality, when the capacity of community living arrangements in an aldermanic district in a city or a ward in a village or town reaches 25 or 1% of the population, whichever is greater, of the district or ward, the municipality may prohibit additional community living arrangements from being located within the district or ward. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the municipality.

2. No community living arrangement may be established after January 1, 1995, within 2,500 feet, or any lesser distance established by an ordinance of the municipality, of any other such facility. Agents of a facility may apply for an exception to this requirement, and exceptions may be granted at the discretion of the municipality. Two community living arrangements may be adjacent if the municipality authorizes that arrangement and if both facilities comprise essential components of a single program.

(bm) A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or

an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, religious associations, as defined in s. 157.061 (15), associations, or public agencies shall be subject to pars. (a) and (b).

(br)

1. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the municipality, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the municipality.

2. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 1. and that is licensed under s. 50.033 (1m) (b) is permitted in the municipality without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in par. (i).

(c) If the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in par. (i).

(d) If the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, or operated, or permitted under the authority of the department of health services or the department of children and families, the facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences, except as provided in par. (i), but is entitled to apply for special zoning permission to locate in those areas. The municipality may grant special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(e) If the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in pars. (a) and (b), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The municipality may grant special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(f) The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for adults, and the information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for children, and the information shall be available to the public.

(g) In this subsection, "special zoning permission" includes, but is not limited to, the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(h) The attorney general shall take action, upon the request of the department of health services or the department of children and families, to enforce compliance with this subsection.

(i) Not less than 11 months nor more than 13 months after the first licensure of an adult family home

under s. 50.033 or of a community living arrangement and every year thereafter, the common council or village or town board of a municipality in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the municipality. The determination shall be made according to the procedures provided under par. (i). If the common council or village or town board determines that the existence in the municipality of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the municipality, the common council or village or town board may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the licensed adult family home or community living arrangement. The licensed adult family home or community living arrangement shall cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

(im) The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under par. (i) to assert or prove that the existence of the community living arrangement in the municipality poses a threat to the health, safety or welfare of the residents of the municipality.

(j) A determination under par. (i) shall be made after a hearing before the common council or village or town board. The municipality shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council or village or town board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council, town board or village board. The common council or village or town board shall take notes of the testimony and shall mark and preserve all exhibits. The common council or village or town board may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the municipality. Within 20 days after the hearing, the common council or village or town board shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

History: 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11; 2007 a. 20 ss. 1852 to 1857, 9121 (6) (a); 2009 a. 28, 209, 351, 372, 405; 2011 a. 32.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

A zoning ordinance may distinguish between foster homes and therapeutic homes for the care of children. Browndale International v. Board of Adjustment, 60 Wis. 2d 182, 208 N.W.2d 121 (1973).

A plaintiff is not required to exhaust administrative remedies when his or her claim is that a zoning ordinance is unconstitutional, but may ask for a declaratory judgment. An ordinance classifying land as agricultural when it is unfit for agriculture is unreasonable and amounts to a taking of the land without compensation. Kmiec v. Town of Spider Lake, 60 Wis. 2d 640, 211 N.W.2d 471 (1973).

A property owner does not acquire a "vested interest" in the continuance of a nonconforming use, and such status will be denied if the specific use was casual and occasional, or if the use was merely accessory or incidental to the principal use. Walworth County v. Hartwell, 62 Wis. 2d 57, 214 N.W.2d 288 (1974).

Under s. 59.97 [now s. 59.69] (5) (c), a county zoning ordinance becomes effective in a town upon approval of the text by the town board and the filing of the approving resolution with the town clerk and not when it merely adopts a zoning map. Racine County v. Alby, 65 Wis. 2d 574, 223 N.W.2d 438 (1974).

Zoning ordinances, being in derogation of common law, are to be construed in favor of the free use of private property. Cohen v. Dane County Board of Adjustment, 74 Wis. 2d 87, 246 N.W.2d 112 (1976).

A municipality is not required to show irreparable injury before obtaining an injunction under s. 59.97 [now s. 59.69] (11). County of Columbia v. Bylewski, 94 Wis. 2d 153, 288 N.W.2d 129 (1980).

Under s. 59.97 [now s. 59.69] (9) a county may rezone county-owned land contrary to town zoning laws and without town approval. Town of Ringle v. County of Marathon, 104 Wis. 2d 297, 311 N.W.2d 595 (1981).

The primary authority to enact, repeal, and amend a zoning ordinance is at the county, not town, level. The county is responsible for any liabilities that may arise from adoption. No liability arises to a town from the town's approval of a county ordinance enacted following the repeal of a prior effective ordinance. M & I Marshall Bank v. Town of Somers, 141 Wis. 2d 271, 414 N.W.2d 824 (1987).

When it is claimed that zoning resulted in a taking of land without compensation, there is no compensable taking unless the regulation resulted in a diminution of value so great that it amounts to a confiscation. M & I Marshall Bank v. Town of Somers, 141 Wis. 2d 271, 414 N.W.2d 824 (1987).

For purposes of determining a nonconforming use for a quarry site, all land that contains the mineral and is integral to the operation is included, although a particular portion may not be under actual excavation. Smart v. Dane County Board of Adjustment, 177 Wis. 2d 445, 501 N.W.2d 782 (1993).

The power to regulate nonconforming uses includes the power to limit the extension or expansion of the use if it results in a change in the character of the use. Waukesha County v. Pewaukee Marina, Inc. 187 Wis. 2d 18, 522 N.W.2d 536 (Ct. App. 1994).

When a zoning ordinance is changed, a builder may have a vested right, enforceable by mandamus, to build under the previously existing ordinance if the builder has submitted, prior to the change, an application for a permit in strict and complete conformance with the ordinance then in effect. Lake Bluff Housing Partners v. South Milwaukee, 197 Wis. 2d 157, 540 N.W.2d 189 (1995), 94-1155.

Unless the zoning ordinance provides otherwise, a court should measure the sufficiency of a conditional use application at the time that notice of the final public hearing is first given. Weber v. Town of Saukville, 209 Wis. 2d 214, 562 N.W.2d 412 (1997), 94-2336.

A permit issued for a use prohibited by a zoning ordinance is illegal per se. A conditional use permit only allows a property owner to put the property to a use that is expressly permitted as long as conditions have been met. A use begun under an illegal permit cannot be a prior nonconforming use. Foresight, Inc. v. Babl, 211 Wis. 2d 599, 565 N.W.2d 279 (Ct. App. 1997), 96-1964.

A nonconforming use, regardless of its duration, may be prohibited or restricted if it also constitutes a public nuisance or is harmful to public health, safety, or welfare. Town of Delafield v. Sharpley, 212 Wis. 2d 332, 568 N.W.2d 779 (Ct. App. 1997), 96-2458.

A county executive's power to veto ordinances and resolutions extends to rezoning petitions that are in essence proposed amendments to the county zoning ordinance. The veto is subject to limited judicial review. *Schmeling v. Phelps*, 212 Wis. 2d 898, 569 N.W.2d 784 (Ct. App. 1997), 96-2661.

Sub. (11) does not eliminate the traditional equitable power of a circuit court. It is within the power of the court to deny a county's request for injunctive relief when a zoning ordinance violation is proven. The court should take evidence and weigh equitable considerations including that of the state's citizens. *Forest County v. Goode*, 219 Wis. 2d 654, 579 N.W.2d 715 (1998), 96-3592.

Construction in violation of zoning regulations, even when authorized by a voluntarily issued permit, is unlawful. However, in rare cases, there may be compelling equitable reasons when a requested order of abatement should not be issued. *Lake Bluff Housing Partners v. City of South Milwaukee*, 222 Wis. 2d 222, 588 N.W.2d 45 (Ct. App. 1998), 97-1339.

A conditional use permit did not impose a condition that the conditional use not be conducted outside the permitted area. It was improper to revoke the permit based on that use. An enforcement action in relation to the parcel where the use was not permitted was an appropriate remedy. *Bettendorf v. St. Croix County Board of Adjustment*, 224 Wis. 2d 735, 591 N.W.2d 916 (Ct. App. 1999), 98-2327.

Once a municipality has shown an illegal change in use to a nonconforming use, the municipality is entitled to terminate the entire nonconforming use. The decision is not within the discretion of the court reviewing the order. *Village of Menomonee Falls v. Preuss*, 225 Wis. 2d 746, 593 N.W.2d 496 (Ct. App. 1999), 98-0384.

To violate substantive due process guarantees, a zoning decision must involve more than simple errors in law or an improper exercise of discretion; it must shock the conscience. The city's violation of a purported agreement regarding zoning was not a violation. A court cannot compel a political body to adhere to an agreement regarding zoning if that body has legitimate reasons for breaching. *Eternalist Foundation, Inc. v. City of Platteville*, 225 Wis. 2d 759, 593 N.W.2d 84 (Ct. App. 1999), 98-1944.

While the DNR has the authority to regulate the operation of game farms, its authority does not negate the power to enforce zoning ordinances against game farms. Both are applicable. *Willow Creek Ranch v. Town of Shelby*, 2000 WI 56, 235 Wis. 2d 409, 611 N.W.2d 693, 97-2075.

A change in method or quantity of production of a nonconforming use is not a new use when the original character of the use remains the same. The incorporation of modern technology into the business of the operator of a nonconforming use is allowed. *Racine County v. Cape*, 2002 WI App 19, 250 Wis. 2d 44, 639 N.W.2d 782, 01-0740.

Financial investment is a factor to consider when determining whether a zoning violation must be abated, but it does not outweigh all other equitable factors to be considered. *Lake Bluff Housing Partners v. City of South Milwaukee*, 2001 WI App 150, 246 Wis. 2d 785, 632 N.W.2d 485, 00-1958.

While a mere increase in the volume, intensity, or frequency of a nonconforming use is not sufficient to invalidate it, if the increase in volume, intensity, or frequency of use is coupled with some identifiable change or extension, the enlargement will invalidate a legal nonconforming use. A proposed elimination of cabins and the expansion from 21 to 44 RV sites was an identifiable change in a campground and extension of the use for which it had been licensed. *Lessard v. Burnett County Board of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728, 01-2986.

To find discontinuance of a nonconforming use, proof of intent to abandon the nonconforming use is not required. *Lessard v. Burnett County Board of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728, 01-2986.

A conditional use permit (CUP) is not a contract. A CUP is issued under an ordinance. A municipality has discretion to issue a permit and the right to seek enforcement of it. Noncompliance with the terms of a CUP is tantamount to noncompliance with the ordinance. Town of Cedarburg v. Shewczyk, 2003 WI App 10, 259 Wis. 2d 818, 656 N.W.2d 491, 02-0902.

Spot zoning grants privileges to a single lot or area that are not granted or extended to other land in the same use district. Spot zoning is not per se illegal but, absent any showing that a refusal to rezone will in effect confiscate the property by depriving all beneficial use thereof should only be indulged in when it is in the public interest and not solely for the benefit of the property owner who requests the rezoning. Step Now Citizens Group v. Town of Utica, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833, 02-2760.

The failure to comply with an ordinance's notice requirements, when all statutory notice requirements were met, did not defeat the purpose of the ordinance's notice provision. Step Now Citizens Group v. Town of Utica, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833, 02-2760.

Under Goode a landowner may contest whether he or she is in violation of the zoning ordinance and, if so, can further contest on equitable grounds the enforcement of a sanction for the violation. Town of Delafield v. Winkelman, 2004 WI 17, 269 Wis. 2d 109, 675 N.W.2d 470, 02-0979.

A municipality cannot be estopped from seeking to enforce a zoning ordinance, but a circuit court has authority to exercise its discretion in deciding whether to grant enforcement. Upon the determination of an ordinance violation, the proper procedure for a circuit court is to grant an injunction enforcing the ordinance, except when it is presented with compelling equitable reasons to deny it. Village of Hobart v. Brown County, 2005 WI 78, 281 Wis. 2d 628, 698 N.W.2d 83, 03-1907.

An existing conditional use permit (CUP) is not a vested property right and the revocation of the permit is not an unconstitutional taking. A CUP merely represents a species of zoning designations. Because landowners have no property interest in zoning designations applicable to their properties, a CUP is not property and no taking occurs by virtue of a revocation. Rainbow Springs Golf Company, Inc. v. Town of Mukwonago, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40, 04-1771.

A municipality may not effect a zoning change by simply printing a new map marked "official map." Village of Hobart v. Brown County, 2007 WI App 250, 306 Wis. 2d 263, 742 N.W.2d 907, 07-0891.

Zoning that restricts land so that the landowner has no permitted use as of right must bear a substantial relation to the health, safety, morals, or general welfare of the public in order to withstand constitutional scrutiny. Town of Rhine v. Bizzell, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780, 06-0450.

Having a vested interest in the continuance of a use is fundamental to protection of a nonconforming use. There can be no vested interest if the use is not actually and actively occurring at the time the ordinance amendment takes effect. However, it does not follow that any use that is actually occurring on the effective date of the amendment is sufficient to give the owner a vested interest in its continued use. To have a vested interest in the continuation of a use requires that if the continuance of the use were to be prohibited, substantial rights would be adversely affected, which will ordinarily mean that there has been a substantial investment in the use. The longevity of a use and the degree of development of a use are subsumed in an analysis of what investments an owner has made, rather than separate factors to be considered. Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc. 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08-0546.

There must be reasonable reliance on the existing law in order to acquire a vested interest in a nonconforming use. Reasonable reliance on the existing law was not present when the owners knew

the existing law was soon to change at the time the use was begun. Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc. 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08-0546.

The town board's recommendation on a form that was signed by the town board and clerk and dated but not certified as a resolution by the town clerk did not effectively satisfy the statutory elements of a certified copy of a resolution under sub. (5) (e) 3. Although the legislature intended the town board to serve as a political check on the otherwise unfettered discretion of the county board in wielding its legislative zoning power, it prescribed a specific procedure by which towns perform that function. Johnson v. Washburn County, 2010 WI App 50, 324 Wis. 2d 366, 781 N.W.2d 706, 09-0371.

The fact that a county is within a regional planning commission does not affect county zoning power. 61 Atty. Gen. 220.

The authority of a county to regulate mobile homes under this section and other zoning questions are discussed. 62 Atty. Gen. 292.

Zoning ordinances utilizing definitions of "family" to restrict the number of unrelated persons who may live in a single family dwelling are of questionable constitutionality. 63 Atty. Gen. 34.

Under s. 59.97 [now s. 59.69] (5) (c), town board approval of a comprehensive county zoning ordinance must extend to the ordinance in its entirety and may not extend only to parts of the ordinance. 63 Atty. Gen. 199.

A county that has enacted a countywide comprehensive zoning ordinance under this section may not authorize the withdrawal of town approval of the ordinance or exclude any town from the ordinance. 67 Atty. Gen. 197.

The effect of s. 91.73 (4) on procedures to amend county comprehensive zoning ordinances under s. 59.97 [now s. 59.69] (5) (e) is discussed. 67 Atty. Gen. 290.

The office of county planning and zoning commission member is incompatible with the position of executive director of the county housing authority. 81 Atty. Gen. 90.

An amendment to a county zoning ordinance adding a new zoning district does not necessarily constitute a comprehensive revision requiring town board approval of the entire ordinance under s. 59.97 [now s. 59.69] (5) (d). 81 Atty. Gen. 98.

A county's power under sub. (4) is broad enough to encompass regulation of the storage of junked, unused, unlicensed, or abandoned motor vehicles on private property. Because sub. (10) protects "trade or industry," a county zoning ordinance could prohibit an existing non-commercial, nonconforming use or a use that is "casual and occasional." OAG 2-00.

Architectural Appearances Ordinances and the 1st Amendment. Rice. 76 MLR 439 (1992).

59.691 Required notice on certain approvals.

(1) In this section, "wetland" has the meaning given in s. 23.32 (1).

(2)

(a) Except as provided in par. (b), a county that issues a building permit or other approval for

construction activity, shall give the applicant a written notice as specified in subs. (3) and (4) at the time the building permit is issued.

(b)

1. A county is not required to give the notice under par. (a) at the time that it issues a building permit if the county issues the building permit on a standard building permit form prescribed by the department of safety and professional services.

2. A county is not required to give the notice under par. (a) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land.

(3) Each notice shall contain the following language: "YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER."

(4) The notice required in sub. (2) (a) shall contain the electronic Web site address that gives the recipient of the notice direct contact with that Web site.

(5) A county in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

History: 2009 a. 373; 2011 a. 32.

59.692 Zoning of shorelands on navigable waters.

(1) In this section:

(a) "Department" means the department of natural resources.

(b) "Shorelands" means the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 281.31 (2) (d):

1. One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

(bn) "Shoreland setback area" means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under this section.

(c) "Shoreland zoning standard" means a standard for ordinances enacted under this section that is promulgated as a rule by the department.

(d) "Special zoning permission" has the meaning given in s. 59.69 (15) (g).

(1m) To effect the purposes of s. 281.31 and to promote the public health, safety and general welfare, each county shall zone by ordinance all shorelands in its unincorporated area. This ordinance may be enacted separately from ordinances enacted under s. 59.69.

(1r) An ordinance enacted under this section may not prohibit the maintenance of stairs, platforms or decks that were constructed before August 15, 1991, and that are located in any of the following shorelands:

(a) The shoreland of Lake Wissota in Chippewa County.

(b) The shorelands of Lake Holcombe in Chippewa and Rusk counties.

(1s)

(a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location and use that it had immediately before the damage or destruction occurred or impose any limits on the costs of the repair, reconstruction or improvement if all of the following apply:

1. The nonconforming structure was damaged or destroyed after October 14, 1997.

2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(b) An ordinance enacted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(1t) A county or the department may not commence an enforcement action against a person who owns a building or structure that is in violation of a shoreland zoning standard or an ordinance enacted under this section if the building or structure has been in place for more than 10 years.

(1v) A county shall grant special zoning permission for the construction or placement of a structure on property in a shoreland setback area if all of the following apply:

(a) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary high-water mark.

(b) The total floor area of all of the structures in the shoreland setback area of the property will not exceed 200 square feet. In calculating this square footage, boathouses shall be excluded.

(c) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.

(d) The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.

(2)

(a) Except as otherwise specified, all provisions of s. 59.69 apply to ordinances and their amendments enacted under this section whether or not enacted separately from ordinances enacted under s. 59.69, but the ordinances and amendments shall not require approval or be subject to disapproval by any town or town board.

(b) If an existing town ordinance relating to shorelands is more restrictive than an ordinance later enacted under this section affecting the same shorelands, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise.

(c) Ordinances that are enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(3) All powers granted to a county under s. 236.45 may be exercised by it with respect to shorelands, but the county must have or provide a planning agency as defined in s. 236.02 (3).

(4)

(a) Section 66.0301 applies to this section, except that for the purposes of this section an agreement under s. 66.0301 shall be effected by ordinance. If the municipalities as defined in s. 281.31 are served by a regional planning commission under s. 66.0309, the commission may, with its consent, be empowered by the ordinance of agreement to administer each ordinance enacted hereunder throughout its enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.

(b) Variances and appeals regarding shorelands within a county are for the board of adjustment for that county under s. 59.694, and the procedures of that section apply.

(5) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.69 that relate to shorelands.

(6) If a county does not enact an ordinance by January 1, 1968, or if the department, after notice and hearing, determines that a county has enacted an ordinance that fails to meet the shoreland zoning standards, the department shall adopt such an ordinance for the county. As far as possible, s. 87.30 shall apply to this subsection.

(6m) For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department may not proceed under sub. (6) or (7) (b) or (c), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet the shoreland zoning standards.

(7)

(a) Provisions of a county shoreland zoning ordinance that are enacted under this section that were applicable, prior to annexation, to any shoreland area annexed by a city or village after May 7, 1982, shall continue in effect and shall be enforced after annexation by the annexing city or village unless any of the following occurs:

1. The city or village enacts, administers and enforces a zoning ordinance, for the annexed area, that complies with the shoreland zoning standards and that is at least as restrictive as the county shoreland zoning ordinance.

2. After annexation, the city or village requests the county to amend the county shoreland zoning

ordinance as it applies to the annexed area to delete or modify provisions that meet the specifications under par. (ag), the county enacts the amendment and the city or village administers and enforces the amended ordinance as it applies to the annexed area.

3. After annexation, the city or village requests that the county shoreland zoning ordinance, as it applies to the annexed area, continues to be in effect and enforced by the county and the county agrees to enforce the ordinance.

(ad) Provisions of a county shoreland zoning ordinance that are enacted under this section that were applicable, prior to incorporation, to any shoreland area that is part of a town that incorporates as a city or village under s. 66.0203, 66.0211, 66.0213 or 66.0215 after April 30, 1994, shall continue in effect and shall be enforced after incorporation by the incorporated city or village unless any of the following occurs:

1. The city or village enacts, administers and enforces a zoning ordinance that complies with the shoreland zoning standards and that is at least as restrictive as the county shoreland zoning ordinance.

2. After incorporation, the city or village requests the county to amend the county shoreland zoning ordinance as it applies to the incorporated area to delete or modify provisions that meet the specifications under par. (ag), the county enacts the amendment and the city or village administers and enforces the amended ordinance.

3. After incorporation, the city or village requests that the county shoreland zoning ordinance, as it applies to the incorporated area, continues to be in effect and enforced by the county and the county agrees to enforce the ordinance.

(ag) For purposes of pars. (a) 2. and (ad) 2., the types of provisions that may be deleted or modified are those that establish specified land uses or requirements that are associated with those uses and that are not necessary to effect the purposes of s. 281.31 (1) that relate to the protection of navigable waters.

(ar) The county may not enact an amendment under par. (a) 2. or (ad) 2. that is less restrictive than the shoreland zoning standards.

(aw) Any amendment enacted under par. (a) 2. shall apply only to the annexed area of the city or village requesting the amendment.

(b) If the department determines that a zoning ordinance enacted by a city or village under par. (a) 1. or (ad) 1. does not meet the shoreland zoning standards or is not as restrictive as the county shoreland zoning ordinance, the department shall, after providing notice and conducting a hearing on the matter, either issue an order declaring the city or village ordinance void and reinstating the applicability of the county shoreland zoning ordinance to the annexed or incorporated area or issue an order declaring the city or village ordinance void and adopting an ordinance for the annexed or incorporated area for the city or village that does meet the shoreland zoning standards and that is at least as restrictive as the county shoreland zoning ordinance.

(c) If the department determines that an amendment enacted by a county under par. (a) 2. or (ad) 2. does not meet the shoreland zoning standards, the department, after providing notice and conducting a hearing on the matter, shall issue an order declaring the amendment void and shall reinstate the applicability of the county shoreland zoning ordinance, that was in effect before amending the ordinance, to the annexed or incorporated area.

(d) As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

(e) Paragraphs (a) and (ad) do not apply to wetlands in shorelands that are governed by the provisions in s. 61.351 or 62.231.

History: 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 112; 2011 a. 6.

Cross-reference: See also ch. NR 115, Wis. adm. code.

The DNR, as trustee of navigable waters in the state, has standing to appeal shoreline zoning decisions. DNR v. Walworth County Board of Adjustment, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

The private right to fill lakebeds granted under s. 30.11 does not preempt the zoning power of a county over shorelands under this section. State v. Land Concepts, Ltd. 177 Wis. 2d 24, 501 N.W.2d 817 (Ct. App. 1993).

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. State v. Kenosha County Board of Adjustment, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96-1235. See also State v. Outagamie, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98-1046.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. State ex rel. Spinner v. Kenosha County Board of Adjustment, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97-2094.

The state, in administering the Fair Housing Act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. County of Sawyer Zoning Board v. Department of Workforce Development, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99-0707.

In evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking the variance. The facts of the case should be analyzed in light of that purpose, and boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion. State v. Waushara County Board of Adjustment, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514, 02-2400.

The term "floor area" in sub. (1v) (b) unambiguously encompasses only the surface portion of a deck's floorboards and, therefore, does not include portions of the deck's support system that extend beyond the floorboards. If a portion of a structure is outside the setback area, that part is not in the setback area and it is not the portion "extending into" that area for purposes of calculating the 200 square foot restriction in sub. (1v) (b). Propp v. Sauk County Board of Adjustment, 2010 WI App 25, 323 Wis. 2d 495, 779 N.W.2d 705, 09-0209.

County floodplain zoning ordinances may be adopted under s. 59.971 [now 59.692] and do not require the approval of town boards in order to become effective within the unincorporated areas of the county. 62 Atty. Gen. 264.

Counties may zone lands located within 300 feet of an artificial ditch that is navigable in fact. 63 Atty. Gen. 57.

County shoreland zoning of unincorporated areas adopted under s. 59.971 [now 59.692] is not superseded by municipal extraterritorial zoning under 62.23 (7a). Sections 59.971, 62.23 (7), (7a) and 144.26 [now 281.31] are discussed. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations. 63 Atty. Gen. 69.

A county may not enact a shoreland zoning ordinance without a provision regulating nonconforming uses that have been discontinued for 12 months or longer. A county may enact an ordinance without the 50% provision under s. 59.69 (10) (a), in which case common law controls. OAG 2-97.

Wisconsin's Shoreland Management Program: An Assessment With Implications for Effective Natural Resources Management and Protection. Kuczenski. 1999 WLR 273.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

59.693 Construction site erosion control and storm water management zoning.

(1) Definition. In this section, "department" means the department of natural resources.

(2) Authority to enact ordinance. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a county may enact a zoning ordinance, that is applicable to all of its unincorporated area, except as provided in s. 60.627 (2) (b), for construction site erosion control at sites where the construction activities do not include the construction of a building and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 59.69.

(4) Applicability of county zoning provisions; town approval.

(a) Except as otherwise specified in this section, s. 59.69 applies to any ordinance or amendment to an ordinance enacted under this section, but an ordinance or amendment to an ordinance enacted under this section does not require approval and is not subject to disapproval by any town or town board.

(b) Variances and appeals regarding construction site erosion control and storm water management regulations under this section are to be determined by the board of adjustment for that county. Procedures under s. 59.694 apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.69 that relate to construction site erosion control or storm water management regulation.

(6) Applicability of comprehensive zoning plan or general zoning ordinance. Ordinances that are enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(7) Applicability of local subdivision regulation. All powers granted to a county under s. 236.45 may be exercised by the county with respect to construction site erosion control at sites where the construction activities do not include the construction of a building or with respect to storm water management regulation, if the county has or provides a county planning agency as defined in s. 236.02 (1).

(8) Applicability to local governments and agencies. An ordinance that is enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance that is enacted under this section is not applicable to activities conducted by

an agency, as defined under s. 227.01 (1) but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2).

(9) Intergovernmental cooperation.

(a) Except as provided in par. (c), s. 66.0301 applies to this section, but for the purposes of this section an agreement under s. 66.0301 shall be effected by ordinance.

(b) If a county is served by a regional planning commission under s. 66.0309 and if the commission consents, the county may empower the commission by ordinance to administer an ordinance that is enacted under this section throughout the county, whether or not the area otherwise served by the commission includes all of that county.

(c) If the board of commissioners of the Dane County Lakes and Watershed Commission consents, Dane County may empower the commission by ordinance to administer an ordinance that is enacted under this section whether or not the area otherwise served by the commission includes all of Dane County. Section 66.0301 does not apply to this paragraph.

(10) Validity upon annexation. An ordinance that is enacted under this section by a county that is in effect in an area immediately before the area is annexed by a city or village continues in effect in the area after annexation unless the city or village enacts, maintains and enforces a city or village ordinance which complies with minimum standards established by the department and which is at least as restrictive as the county ordinance enacted under this section. If, after providing notice and conducting a hearing on the matter, the department determines that an ordinance that is enacted by a city or village which is applicable to the annexed area does not meet these standards or is not as restrictive as the county ordinance, the department shall issue an order declaring the city or village ordinance void and reinstating the applicability of the county ordinance to the annexed area.

History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16, 246; 1995 a. 201 s. 478; Stats. 1995 s. 59.693; 1995 a. 227; 1997 a. 35; 1999 a. 150 s. 672.

59.694 County zoning, adjustment board.

(1) Appointment, power. The county board may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted under s. 59.69 may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subsection precludes the granting of special exceptions by the county zoning agency designated under s. 59.69 (2) (a) or the county board in accordance with regulations and restrictions adopted under s. 59.69 which were in effect on July 7, 1973, or adopted after that date.

(2) Personnel.

(a) In counties with a population of less than 500,000, the board of adjustment shall consist of not more than 5 members as determined by resolution of the county board. The chairperson of the county board shall appoint the members with the approval of the county board for terms of 3 years beginning July 1. The incumbent members shall continue to serve until their terms expire. The county board resolution increasing the size of the board of adjustment shall indicate how many members shall be appointed for 1, 2 and 3 years prior to July 1 of the year in which the change takes effect in making the first appointments. If the county board, by resolution, determines to reduce the membership of the board of

adjustment below 5 but not less than 3, one of the positions for which the term expires as determined by lot shall not be filled each year until the requisite number of positions has been reached.

(am) The chairperson of the county board to which par. (a) applies shall appoint, for staggered 3-year terms, 2 alternate members of the board of adjustment, who are subject to the approval of the county board. Annually, the chairperson of the county board shall designate one of the alternate members as the first alternate and the other as 2nd alternate. The first alternate shall act, with full power, only when a member of the board of adjustment refuses to vote because of a conflict of interest or when a member is absent. The 2nd alternate shall act only when the first alternate refuses to vote because of a conflict of interest or is absent, or if more than one member of the board of adjustment refuses to vote because of a conflict of interest or is absent.

(b) In counties with a population of 500,000 or more, the board of adjustment shall consist of 3 members who are residents of the county, elected by the county board for terms of 1, 2 and 3 years, respectively, and until their successors are elected and qualify.

(bm) The chairperson of the county board to which par. (b) applies shall appoint, for staggered 3-year terms, 2 alternate members of the board of adjustment, who are subject to the approval of the county board. Annually, the chairperson of the county board shall designate one of the alternate members as the first alternate and the other as 2nd alternate. The first alternate shall act, with full power, only when a member of the board of adjustment refuses to vote because of a conflict of interest or when a member is absent. The 2nd alternate shall act only when the first alternate refuses to vote because of a conflict of interest or is absent, or if more than one member of the board of adjustment refuses to vote because of a conflict of interest or is absent.

(c) The members of the board of adjustment, including alternate members, shall all reside within the county and outside of the limits of incorporated cities and villages; provided, however, that no 2 members shall reside in the same town. The board of adjustment shall choose its own chairperson. Office room shall be provided by the county board, and the actual and necessary expenses incurred by the board of adjustment in the performance of its duties shall be paid and allowed as in cases of other claims against the county. The county board may likewise compensate the members of the board of adjustment, including alternate members, and the assistants as may be authorized by the county board. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) Rules, meetings, minutes. The county board shall adopt rules for the conduct of the business of the board of adjustment, in accordance with the provisions of any ordinance enacted under s. 59.69. The board of adjustment may adopt further rules as necessary to carry into effect the regulations of the county board. Meetings of the board of adjustment shall be held at the call of the chairperson and at such other times as the board of adjustment may determine. The chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment shall be open to the public. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of adjustment and shall be a public record.

(3m) Quorum requirements. If a quorum is present, the board of adjustment may take action under this section by a majority vote of the members present.

(4) Appeals to board. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the building inspector or other administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from

whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(5) Stays. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify to the board of adjustment after the notice of appeal shall have been filed with that officer that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order, which may be granted upon application to the board of adjustment or by petition to a court of record, with notice to the officer from whom the appeal is taken.

(6) Hearing appeals. The board of adjustment shall fix a reasonable time for the hearing of the appeal and publish a class 2 notice thereof under ch. 985, as well as give due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, a party may appear in person or by agent or attorney. In an action involving a historic property, as defined in s. 44.31 (3), the board of adjustment shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning and zoning committee or commission.

(7) Powers of board. The board of adjustment shall have all of the following powers:

(a) To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of s. 59.69 or of any ordinance enacted pursuant thereto.

(b) To hear and decide special exceptions to the terms of the ordinance upon which the board is required to pass under such ordinance.

(c) To authorize upon appeal in specific cases variances from the terms of the ordinance that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(d) To grant special exceptions and variances for renewable energy resource systems. If the board denies an application for a special exception or variance for such a system, the board shall provide a written statement of its reasons for denying the application. In this paragraph, "renewable energy resource system" means a solar energy system, a waste conversion energy system, a wind energy system or any other energy system which relies on a renewable energy resource.

(8) Order on appeal. In exercising the powers under this section, the board of adjustment may, in conformity with the provisions of this section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(9) Majority rule. A majority vote of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(10) Certiorari. A person aggrieved by any decision of the board of adjustment, or a taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board, commence an action seeking the remedy available by certiorari. The court shall not stay the decision appealed from, but may, with notice to the board, grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of

the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

(14) Costs. Costs shall not be allowed against the board of adjustment unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

History: 1973 c. 60, 336; 1981 c. 289, 354; 1983 a. 192 ss. 132, 133, 303 (2); 1987 a. 395; 1991 a. 316; 1993 a. 171; 1995 a. 201 s. 479; Stats. 1995 s. 59.694; 1997 a. 35; 2005 a. 34.

Judicial Council Note, 1981: *Subsections (11), (12) and (13) have been repealed as unnecessary because in large part they merely describe the remedy of certiorari, which is now available in an ordinary action. See s. 781.01, stats., and the note thereto. Those provisions of the repealed subsections which permit departure from ordinary certiorari procedures, such as augmentation of the record by the court, have been placed in sub. (10). No substantive change in the scope or standard of review is intended. [Bill 613-A]*

There is no significant difference between "unnecessary hardship" under s. 59.99 [now s. 59.694] (7) (c) and "practical difficulties." Grounds for variances are discussed. Snyder v. Waukesha County Zoning Board, 74 Wis. 2d 468, 247 N.W.2d 98 (1976).

An aggrieved person has the right to appeal to the board of adjustment from a zoning committee's decision to grant conditional use permits. League of Women Voters v. Outagamie County, 113 Wis. 2d 313, 334 N.W.2d 887 (1983).

Aggrieved residents had the right to appeal even though they did not appear at committee hearings. Commencement of construction, not publication of hearing notices, constituted notice to residents that a permit had been issued. The standard of review is discussed. State ex rel. Brookside v. Jefferson County Board of Adjustment, 131 Wis. 2d 101, 388 N.W.2d 593 (1986).

Filing of a petition for a writ of certiorari, without more, did not satisfy the requirement under s. 59.99 [now s. 59.694] (10) that an action be commenced within 30 days. Schwochert v. Marquette County Board, 132 Wis. 2d 196, 389 N.W.2d 841 (Ct. App. 1986).

A trial court must exercise discretion when taking additional evidence pursuant to s. 59.99 [now s. 59.694] (10). If evidence taken is substantially similar to that which the board received, review is confined to a certiorari standard. Klinger v. Oneida County, 149 Wis. 2d 838, 440 N.W.2d 348 (1989).

Under Brookside, the appeal time begins to run at the time notice is given, if the zoning ordinance has a notice provision, and if there is no notice provision, when the aggrieved parties find out about the decision. DNR v. Walworth County Board of Adjustment, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

The 30-day limitation period for commencing a certiorari action under s. 59.99 [now s. 59.694] (10) applies to the time allowed for filing an action that is commenced by a complaint and applies to the time allowed for service when commenced by writ. DNR v. Walworth County Board of Adjustment, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

General, rather than explicit, standards regarding the granting of special exceptions may be adopted and applied by a governing body. The applicant has the burden of formulating conditions showing that the proposed use meets the standards. Upon approval, additional conditions may be imposed by the

governing body. Kraemer & Sons v. Sauk County Adjustment Board, 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

The 30-day period to appeal a decision under s. 59.99 [now s. 59.694] (10) runs from the entry of the original decision in a matter and is not extended by filing a motion to reconsider unless the motion raises a new issue. Bettendorf v. St. Croix County Bd. of Adjustment, 188 Wis. 2d 311, 525 N.W.2d 89 (Ct. App. 1994).

A variance may be granted if application of the zoning ordinance results in unnecessary hardship and the condition is unique to the parcel. Concerns over the most profitable use of a parcel are not proper grounds for granting variances. State v. Winnebago County, 196 Wis. 2d 836, 540 N.W.2d 6 (Ct. App. 1995), 94-3199.

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. State v. Kenosha County Board of Adjustment, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96-1235. See also State v. Outagamie, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98-1046.

Failure to join an indispensable party in a certiorari action under sub. (10) is not jurisdictional. Filing the certiorari action tolls the 30-day period of limitations. Failure to name the party within the 30-day statutory period does not require dismissal. County of Rusk v. Rusk County Board of Adjustment, 221 Wis. 2d 526, 585 N.W.2d 706 (Ct. App. 1998), 98-0298.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. State ex rel. Spinner v. Kenosha County Board of Adjustment, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97-2094.

The notice of claim provisions of s. 893.80 do not apply to certiorari actions under sub. (10). Kapischke v. County of Walworth, 226 Wis. 2d 320, 595 N.W.2d 42 (Ct. App. 1999), 98-0796.

Review of a certiorari action is limited to determining: 1) whether the board kept within its jurisdiction; 2) whether the board proceeded on a correct theory of law; 3) whether the board's action was arbitrary, oppressive, or unreasonable; and 4) whether the evidence was such that the board might reasonably make its order. Kapischke v. County of Walworth, 226 Wis. 2d 320, 595 N.W.2d 42 (Ct. App. 1999), 98-0796.

The state, in administering the Fair Housing Act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. County of Sawyer Zoning Board v. Department of Workforce Development, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99-0707.

A variance authorizes a landowner to establish or maintain a use prohibited by zoning regulations. A special exception allows the landowner to put the property to a use expressly permitted but that conflicts with some requirement of the ordinance. The grant of a special exception does not require the showing of hardship required for a variance. Fabyan v. Waukesha County Board of Adjustment, 2001 WI App 162, 246 Wis. 2d 851, 632 N.W.2d 116, 00-3103.

The public policy of promoting confidence in impartial tribunals may justify expansion of the certiorari record when evidence outside of the record demonstrates procedural unfairness. However, before a circuit court may authorize expansion, the party alleging bias must make a prima facie showing of wrongdoing. Silis v. Walworth Cty Land, 2002 WI App 111, 254 Wis. 2d 538, 648 N.W.2d 878, 01-0901.

An ordinance requirement that no special use permit will be granted unless it is "necessary for the public convenience" meant that the petitioner had to present sufficient evidence that the proposed use

was essential to the community as a whole. *Hearst-Argyle Stations v. Board of Zoning Appeals of the City of Milwaukee*, 2003 WI App 48, 260 Wis. 2d 494, 659 N.W.2d 424, 02-0596.

Area variance applicants need not meet the no reasonable use of the property standard that is applicable to use variance applications. The standard for unnecessary hardship required in area variance cases is whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with those restrictions unnecessarily burdensome. *Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401, 02-1618.

In evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking the variance. The facts of the case should be analyzed in light of that purpose, and boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion. *State v. Waushara County Board of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514, 02-2400.

When reviewing a decision to grant or deny a conditional use permit, a county board of adjustment has the authority to conduct a de novo review of the record and substitute its judgment for the county zoning committee's judgment. Moreover, under the applicable state statute, a board has authority to take new evidence. *Osterhues v. Board of Adjustment for Washburn County*, 2005 WI 92, 282 Wis. 2d 228, 698 N.W.2d 701, 03-2194.

A board of appeals may not simply grant or deny an application with conclusory statements that the application does or does not satisfy the statutory criteria, but shall express, on the record, its reasoning why an application does or does not meet the statutory criteria. Even when a board's decision is dictated by a minority, these controlling members of the board ought to be able to articulate why an applicant has not satisfied its burden of proof on unnecessary hardship or why the facts of record cannot be reconciled with some requirement of the ordinance or statute. A written decision is not required as long as a board's reasoning is clear from the transcript of its proceedings. *Lamar Central Outdoor, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87, 01-3105.

Although a county's ordinance used the term "variance" to describe an exception to the setback standard, it did not have the technical legal meaning commonly used in a zoning context. Rather, under the terms of the ordinance, a "variance" could be granted as part of the conditional use permit process, not as a separate determination based on the demonstration of a hardship. *Roberts v. Manitowoc County Board of Adjustment*, 2006 WI App 169, 295 Wis. 2d 522, 721 N.W.2d 499, 05-2111.

The court's opinion that a deck was optimally located in its current position was not the relevant inquiry in regard to the granting of an area variance. The board of adjustment was justified in determining that the property owner's desire for the variance to retain their nonconforming deck was based on a personal inconvenience rather than an unnecessary hardship. *Block v. Waupaca County Board of Zoning Adjustment*, 2007 WI App 199, 305 Wis. 2d 325, 738 N.W.2d 132, 06-3067.

Ziervogel did not state that use cannot be a factor in an area variance analysis. It stated that use cannot overwhelm all other considerations in the analysis, rendering irrelevant any inquiry into the uniqueness of the property, the purpose of the ordinance, and the effect of a variance on the public interest. Here, the board properly considered the purpose of the zoning code, the effect on neighboring properties, and the hardship alleged. *Driehaus v. Walworth County*, 2009 WI App 63, 317 Wis. 2d 734, 767 N.W.2d 343, 08-0947.

City or village residents are not eligible for service on a county zoning board of adjustment. 61 Atty. Gen. 262.

A self-created or self-imposed hardship does not constitute an unnecessary hardship for which a county zoning board of adjustment may grant a variance under the provisions of s. 59.99 [now s. 59.694] (7) (c). 62 Atty. Gen. 111.

The extent to which this section authorizes a county board of adjustment to grant zoning variances and review decisions of a county planning and zoning committee is discussed. 69 Atty. Gen. 146.

A county cannot exercise its home rule authority in such a way as to appoint one regular member and one alternate member who reside in the same town to a county board of adjustment. OAG 2-07.

A New Uncertainty in Local Land Use: A Comparative Institutional Analysis of State v. Outagamie County Board of Adjustment. Friebus. 2003 WLR 571.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

59.696 Zoning; filing fees. The board may enact ordinances establishing schedules of reasonable filing fees for the filing of petitions to amend county zoning ordinances and notices of appeal to the board of adjustment from determinations of county zoning authorities and providing for the charging and collection of such filing fees; such fees to be used to partially defray the expenses of holding hearings and giving notices of hearings prescribed in ss. 59.69 and 59.694.

History: 1995 a. 201 s. 126.

59.697 Fees for zoning appeals. The board may establish a schedule of fees to be charged for the filing of petitions for amendment and notices of appeal under ss. 59.69 and 59.694, relating to zoning ordinances.

History: 1995 a. 201 s. 182.

59.698 Zoning, building inspector. Except as provided under s. 59.69 (2) (bm), for the enforcement of all laws, ordinances, rules and regulations enacted under s. 59.69, the board may appoint a building inspector, define the building inspector's duties and fix the building inspector's term of office and compensation.

History: 1995 a. 201 s. 125.