

Zoning ordinance enforcement



Center for Land Use Education

Michael D. Dresen, Director
Cooperative Extension and the College of Natural Resources
University of Wisconsin - Stevens Point

The goal is voluntary compliance based on:

- public support for plan objectives,
- knowledge of regulations,
- rational link between plan objectives & regulations, and
- demonstrated fairness & consistency in application of regulations.



The historical problems are:

- Patchwork of regulation
- No "one stop shopping"
- No registry of non-conforming uses or structures (or improvements to date)
- Visibility of inconsistent enforcement or non-enforcement
- Adversarial relationships

"Intake" Process

- Permit applications
- Complaints
- Planned or incidental inspections

Adopt a formal enforcement policy

- State enforcement objectives:
 - Voluntary compliance
 - Progressive enforcement
 - Multiple opportunities for compliance
- Assign responsibilities
- Emphasize documentation
- Forfeitures + injunctive relief (restoration)
- Pre-enforcement conferencing
- Joint liability of owner & contractor
- Increased penalties/fees for:
 - Repeat offenders
 - After-the-fact permits



Compliance with issued permits

- Inspection
 - Self certification & documentation
 - Third party monitoring
 - Volunteers
 - Permit tracking thru master parcel records & GIS
- Performance guarantees
 - Performance bonding & letters of credit
 - Phased construction & authority
- Operation & occupancy permits
- Record extraordinary development requirements on deeds



Processing violation complaints

- 1) Accept complaint & complete report
- 2) ID location, activity, violator & complainant
- 3) Check for issued/pending permits
- 4) Log in complaint
- 5) Investigate site, collect evidence & interview parties/witnesses



Investigation entry

** Avoid Trespass **

- Public Site
- Emergency or exigent circumstances
- Consent
- Special Inspection Warrant
(s. 66.0119, Stats.)
- "Open Fields" Doctrine

"Open Fields" Doctrine

- ... [O]pen fields do not provide the setting for those intimate activities that the [Fourth] Amendment is intended to shelter from government interference or surveillance. There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops, that occur in open fields.... [T]he asserted expectation of privacy in open fields is not an expectation that "society recognizes as reasonable."

"Open Fields" Doctrine

- The Court declared that "[a]n open field need be neither 'open' nor a 'field' as those terms are used in common speech.... [A] thickly wooded area ... may be an open field as that term is used in construing the Fourth Amendment."

"Open Fields" Doctrine

- "Curtilage"
is the land and buildings immediately surrounding a house.

Processing complaints

- 6) Send/serve violation notice or citation
- 7) Send restoration order/plan
- 8) Notify committee of pending violations & resolutions
- 9) Publicity???
- 10) Present annual report to committee



Enforcement Options

- 1) Voluntary compliance
- 2) Voluntary compliance with a stipulated agreement
- 3) Citation for monetary forfeiture
- 4) Civil Action:
Long form summons & complaint for court ordered restoration (injunctive relief)



Stipulated Agreements

- Usually triggered by citation or letter from corporation counsel
- Can also be used to settle civil actions
- Agreement details restoration measures & schedule that parties have agreed upon (usually drafted by counsel).
- May include a reduced forfeiture for compliance.
- May be formalized by court as a consent order.



Stipulated Agreements

- How did we get here
- Agreed facts
- What will be done
 - How much \$ paid and when
 - Action to be taken
 - Performance standards / Follow-up
- What if not done
- Nature of agreement

Citations for zoning enforcement

Authority for citations (s. 66.0113, Stats.)

- Monetary forfeitures only (like a traffic ticket)
- Issued by designated officers
- Arrest warrant or order to pay if no response



Required information on citation

- Elements of the violation
- ID violator (principal & parties to violation)
- Venue (location)
- Time
- Disposition options (forfeiture)
- Place of return of citation



Elements of the violation

- Cite ordinance provision
- Dissect provision
 - Geographic jurisdiction
 - Activity jurisdiction
 - Measurements & reference points
 - Describe prohibited activity in detail
 - Describe impacts relating to purpose of ordinance
 - Supplement citation with an "incident report"
- Who observed what, when & where?



ID the violator

- Landowner
 - Individual, joint & corporate owners
- Parties to violation
 - Contractor (corporations & partnerships)
- "Repeater" provisions



Evidence

- Rules of evidence:
 - Material (relevant) evidence
 - Best evidence
 - Chain of custody for physical evidence
 - No hearsay ("he said she said")



Civil Action

- Violation information is referred to corporation counsel
- Counsel drafts a summons & complaint
- Complaint is served on violator
- Pretrial conferencing
- Trial to the court
- Court may order compliance/restoration (injunctive relief)
- Failure to comply with injunction may result in incarceration as contempt

Restoration & violation orders

- 1) Name violator
- 2) Describe location (legal description & street address)
- 3) Note time of inspection & inspector
- 4) Describe violation
- 5) Name authority for enforcement (ordinance section)
- 6) Describe required remedial measures in detail
- 7) Outline reasonable compliance schedule
- 8) Describe any additional sanctions
- 9) Describe appeal rights



Variances & appeals as remedies for violation

- Owner has right to apply.
- Stays action (freezes proceedings) but:
 - owner may apply to BOA or court for a restraining order
 - Administrator may file "certificate of necessity" with BOA
- Good application materials allow violator to weigh likelihood of success.
- Continue investigation & remediation.



Appeal of zoning board decisions to Circuit Court

- An aggrieved person, taxpayer, municipal officer or body may appeal a decision within 30 days of its filing in the office of the BOA.
- BOA proceedings must be filed with the court.
- An appeal to circuit court does not automatically stay the decision.
- However, the court may, for cause & with notice to the BOA, grant a restraining order.



Incomplete applications encourage violation

- Application & plans should confine construction to legal activities.
- Local rules should require complete applications.
- Courts have ruled that an application must be complete as of the first notice publication of the final public hearing on a matter.



Rehearing & reconsideration

- Local rules may prohibit reconsideration of a decision unless there has been a substantial change in the proposal, error, misrepresentation or other changed circumstances.
- Notice of rehearing must be sent to parties & the public.
- The petitioner may have a claim against the unit of government if the appeal period has expired & he/she made good faith investments in reliance on the decision.



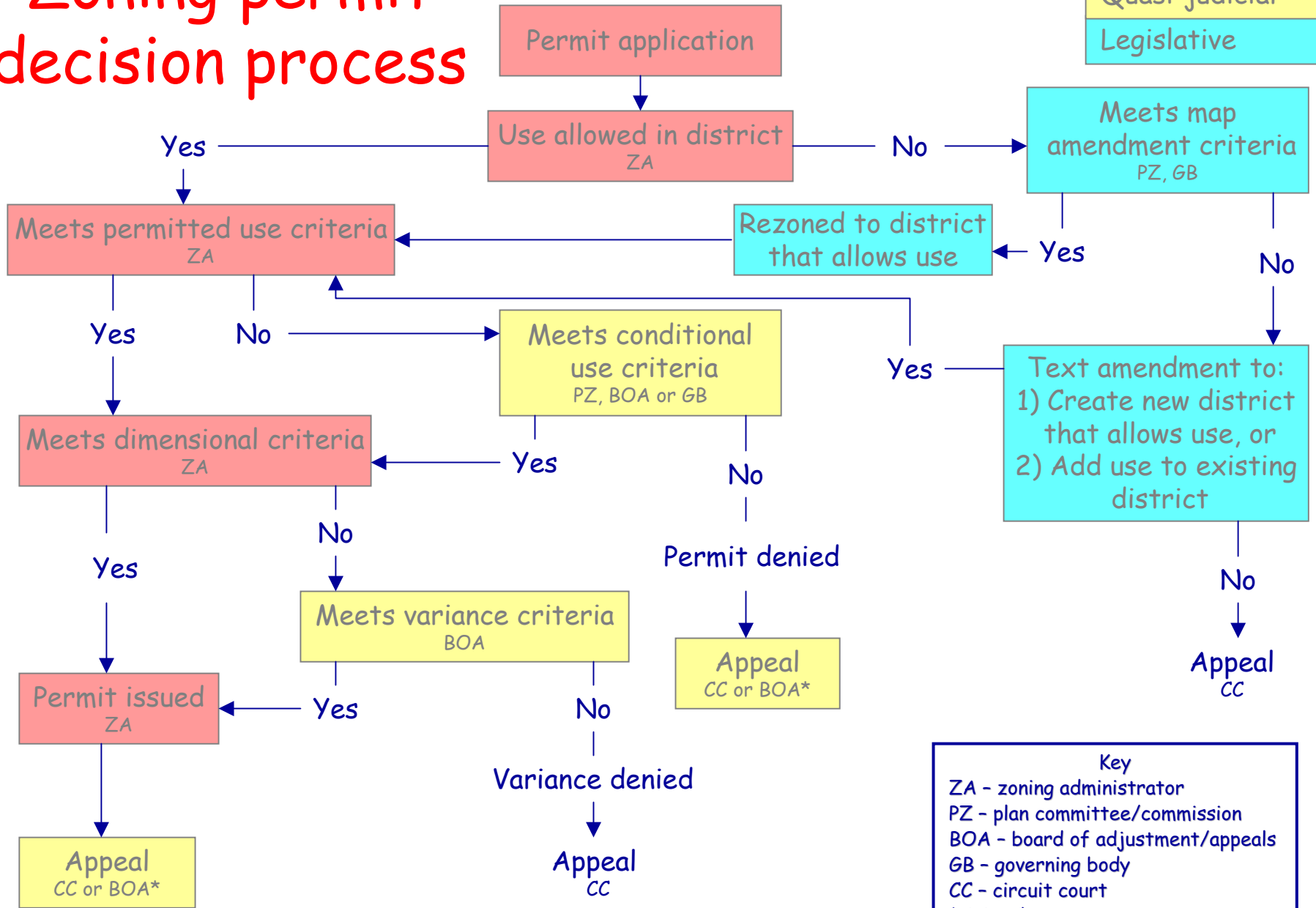
Enforcement administration

- Committee should be informed
- Provide related staff training
- Maintain relationships with & educate prosecutor & judiciary
- Maintain relationships with & educate counsel for applicants & violators



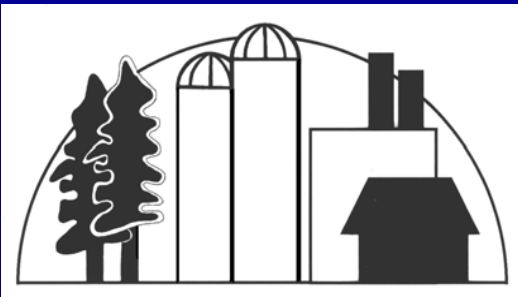
Zoning permit decision process

Administrative
Quasi-judicial
Legislative



Key
 ZA - zoning administrator
 PZ - plan committee/commission
 BOA - board of adjustment/appeals
 GB - governing body
 CC - circuit court
 * BOA does not review its own decisions

Education today
may mean
no enforcement
tomorrow



Center for Land Use Education

Michael D. Dresen, Director
Cooperative Extension and the College of Natural Resources
University of Wisconsin - Stevens Point