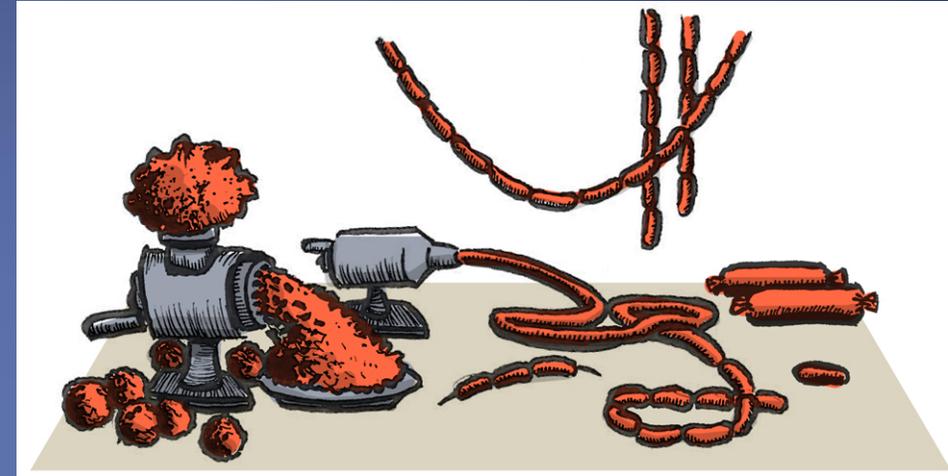


Recent state legislation

WCCA

March 22, 2018

Lynn Markham
UW-Extension



Legislation

1. Nonconforming structures
2. Structures in violation in shoreland zoning
3. Substandard Lots
4. Variances
5. Conditional Use Permits
6. Wetlands

Nonconforming structures

2017 WI Act 67

Went into effect 11-28-17

- 59.69 (10e) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.
- 59.69 (10e) (b) An ordinance **may not prohibit, or limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure** or any part of a nonconforming structure.
- Same changes made for city, village and town zoning

Structures in violation of shoreland zoning may be repaired & rebuilt without approval or fee

2017 WI Act 68

Went into effect 11-28-17

- 59.692(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.**
- 59.692(1k)(a) **The department may not ...** by enacting or enforcing a shoreland zoning ordinance, that **does any of the following:**
 - ...
 - **2. Except as provided in par. (b), requires any approval or imposes any fee or mitigation requirement for, or otherwise prohibits or regulates, the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of any of the following if the activity does not expand the footprint of the structure:**
 - **a. A nonconforming structure.**
 - **b. A structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015.**
 - **c. A building or structure in violation of a county shoreland zoning ordinance that, under sub. (1t), may not be enforced. (No vertical or lateral expansion allowed for structures in violation)**

Substandard lots

2017 WI Act 67

Went into effect 11-28-17

- 2017 U.S. Supreme Court decision *Murr v. Wisconsin* found that a provision in the St. Croix County ordinance that merged two substandard lots under common ownership to protect the St. Croix Wild and Scenic River did not constitute a regulatory taking
- 66.10015(2)(e) City, village, town or county **may not prohibit a property owner from:**
 1. **Conveying an ownership interest in a substandard lot.**
 2. **Using a substandard lot as a building site if the substandard lot has not been developed with a structure placed partly on an adjacent lot, and the substandard lot is developed to comply with all other ordinances**
- **City, village, town or county is prohibited from requiring that lots be merged without consent of the owners**



Variations – reflects current case law

2017 WI Act 67

Went into effect 11-28-17

- A property owner bears the burden of proving "unnecessary hardship" by demonstrating either of the following:
 - 1. For an **area variance**, that strict compliance with a zoning ordinance would **unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome**.
 - 2. For a **use variance**, that strict compliance with a zoning ordinance would leave the property owner with **no reasonable use of the property in the absence of a variance**.
- In both situations, the property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than personal considerations, and that the unnecessary hardship was not created by the property owner.

"Unnecessary hardship" for area variances means...

Timeline

1965 – *Markdale*

No reasonable use without a variance

1976 – *Snyder*

Unnecessarily burdensome in view of ordinance purposes

1998 – *Kenosha*

No reasonable use without a variance

2001 – *Outagamie*

???

2004 – *Ziervogel & Waushara*

Unnecessarily burdensome in view of ordinance purposes

Variance language in Act 67 puts the 2004 *Ziervogel* language from the WI Supreme Court into statutes which eliminates the possibility of switching the definition of unnecessary hardship for area variances back to “no reasonable use in the absence of a variance” by a court decision.

Variations – reflects current case law

2017 WI Act 67

Went into effect 11-28-17

- 59.694(7)(c)
- 4. A county board may enact an ordinance specifying an expiration date for a variance granted under this paragraph if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of adjustment does not specify an expiration date for the variance, a variance granted under this paragraph does not expire unless, at the time it is granted, the board of adjustment specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.
- 5. A variance granted under this paragraph runs with the land.
- Once a variance is acted upon (the building is built), the variance runs with the land to all future property owners.

Conditional use permits

2017 WI Act 67

Went into effect 11-28-17

- "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.
- 1. If an applicant for a conditional use permit meets **or agrees to meet** all of the requirements and conditions specified in the county ordinance or those imposed by the county **zoning board**, the county **shall** grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be **based on substantial evidence**

Conditional use permits

2017 WI Act 67

Went into effect 11-28-17

-
2. The requirements and conditions described under subd. 1. must be **reasonable and, to the extent practicable, measurable** and may include conditions **such as** the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county's decision to approve or deny the permit must be supported by substantial evidence.

Conditional use permits

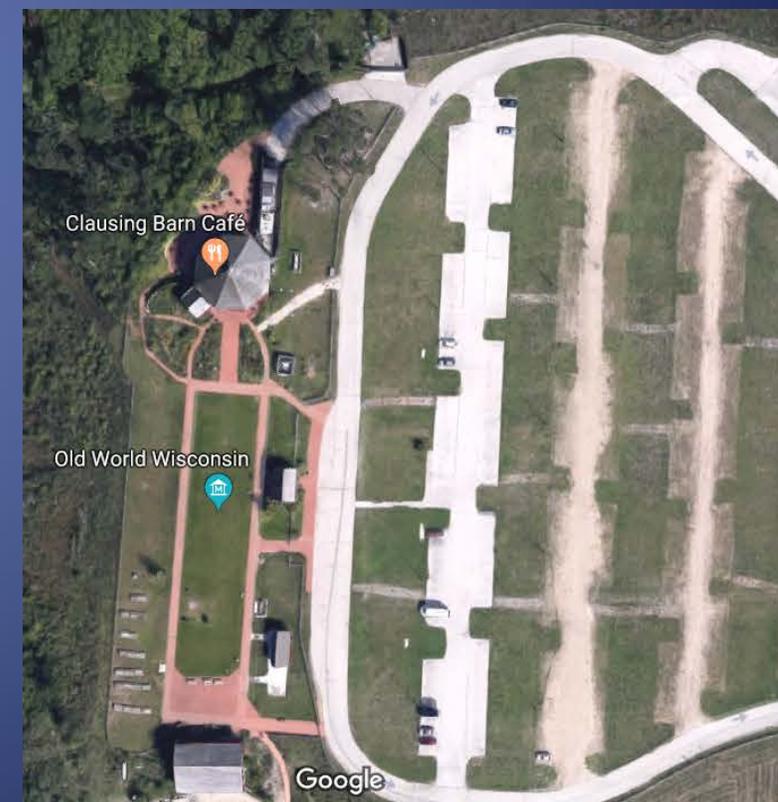
2017 WI Act 67

Went into effect 11-28-17

■ Tips

Consider your county's list of conditional uses.

- Do you **always** want to grant these CUPs if the list of requirements is met?
 - On the most sensitive slopes and soils?
 - Next to all other uses allowed in these zoning districts?
 - On all existing lots? May set minimum lot size to accommodate use and parking (e.g. wedding barn) or minimum distance to residences (e.g. dog kennels)
- **If not**, remove them from the list of CUPs from districts where you don't always want to grant them, or add additional requirements.
- Should they be CUs in fewer zoning districts?
- **Do you have standards for rezoning? Are they sufficient?**



Example rezoning standards

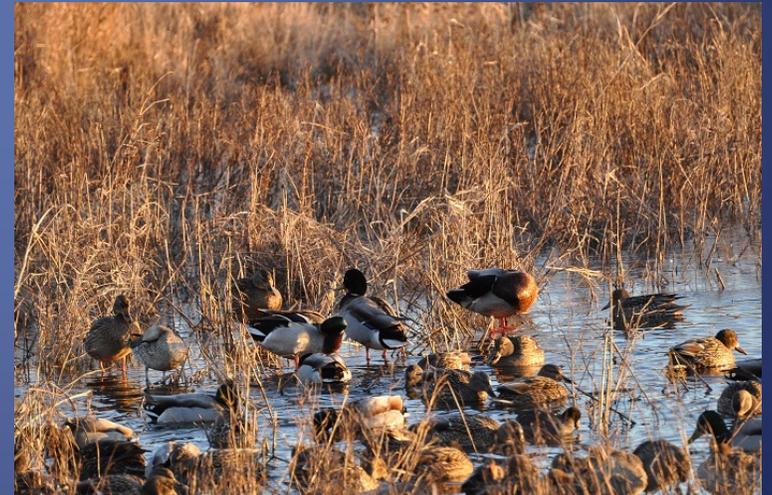
- ❑ The amendment is consistent with the comprehensive plan.
- ❑ The amendment will not be detrimental to property in the immediate vicinity or to the community as a whole.
- ❑ The amendment will not have a significant adverse impact on the natural environment (i.e. air, water, noise, stormwater management, soils, wildlife, vegetation, etc.), or the impact could be mitigated by improvements on the site or in the immediate vicinity.
- ❑ The amendment will not have a significant adverse impact on the ability to provide adequate public facilities or services
- ❑ The amendment will not result in illegal “spot zoning” (i.e. use is inconsistent with surrounding properties and serves only a private, rather than public interests).

Wetlands in WI

- Wetlands provide habitat for ducks, fish, other water birds, and mammals
- Wetlands reduce flooding impacts to homes, roads, bridges and culverts for downstream communities
- Estimated damage to WI public infrastructure (roads & bridges) from flooding in 2016-17 is over \$52 million, not including damage to homes & other buildings



Vernon County, 2016





Count	Counties
0	Adams, Ashland, Barron, Beaver Dam, Bertram, Brown, Calumet, Crawford, De Kalb, Dodge, Fond du Lac, Grant, Green, Iron, Jackson, Jefferson, Johnson, Kenosha, Lincoln, Manitowish, Marquette, May, Monroe, Oneida, Outagamie, Pepin, Pierce, Portage, Richland, Rock, St. Croix, Taylor, Trempealeau, Vernon, Walworth, Washburn, Winnebago, Wisconsin, Wood County
1	Clark, Columbia, Dane, De Kalb, Dodge, Fond du Lac, Grant, Green, Iron, Jackson, Jefferson, Johnson, Kenosha, Lincoln, Manitowish, Marquette, May, Monroe, Oneida, Outagamie, Pepin, Pierce, Portage, Richland, Rock, St. Croix, Taylor, Trempealeau, Vernon, Walworth, Washburn, Winnebago, Wisconsin, Wood County
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4	Clark, Columbia, Dane, De Kalb, Dodge, Fond du Lac, Grant, Green, Iron, Jackson, Jefferson, Johnson, Kenosha, Lincoln, Manitowish, Marquette, May, Monroe, Oneida, Outagamie, Pepin, Pierce, Portage, Richland, Rock, St. Croix, Taylor, Trempealeau, Vernon, Walworth, Washburn, Winnebago, Wisconsin, Wood County

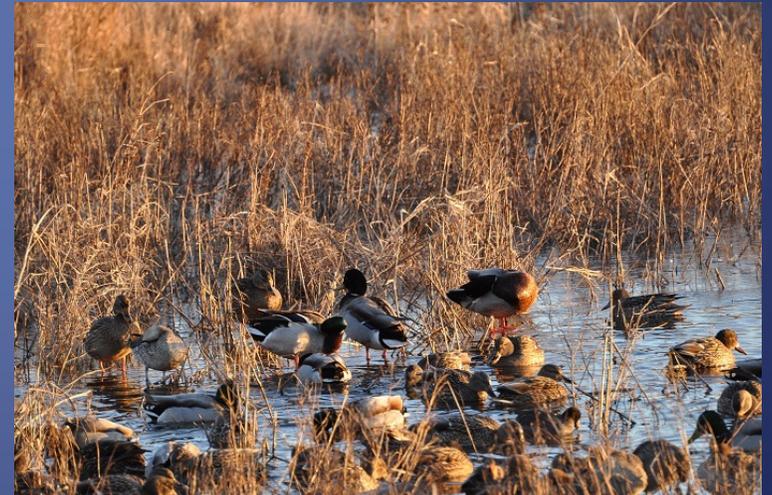
- July 11-12, 2017
3-7 inches of rain caused flash floods in southeast WI
Damage to public infrastructure estimated over \$8 million
- July 19-22, 2017
6-8 inches of rain & damaging winds led to mudslides in SW and WC WI
Damage to public infrastructure estimated over \$10 million
- July 21-22, 2017
Parts of southern WI got 1-4 inches more rain
- July 2017: Walker declared State of Emergency in 20 counties (yellow) and asked for federal FEMA funding
- Southeast deemed not eligible for any FEMA disaster relief or housing grants; can get SBA loans
- 11 Western WI counties granted some FEMA funding

2018 Wetland Legislation AB 547/SB 600

- About 20% of WI wetlands (~1 million acres) are non-federal wetlands that are not protected under the Clean Water Act. Non-federal wetlands are naturally occurring wetlands that are **not** protected by the federal Clean Water Act because they do not have a direct or permanent surface water connection to a navigable lake or river.
- These bills originally proposed removing protections for these wetlands, so filling would be allowed without a permit



Vernon County, 2016



2018 Wetland Legislation

AB 547/SB 600

- Amendment by Senator Rob Cowles (R-De Pere) reduces impact to ~100,000 acres

“Urban area” means any of the following:

- a. An incorporated area. (city or village)
- b. An area within one-half mile of an incorporated area.
- c. An area in a town that is served by a sewerage system.

2018 Wetland Legislation

AB 547/SB 600

281.36 (4n) EXEMPTIONS; CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL WETLANDS.

(b) ...the permitting requirement ...does not apply to any discharge into a nonfederal wetland that occurs in an urban area and to which all of the following apply:

1. The discharge does not affect more than one acre of wetland per parcel.
2. The discharge does not affect a rare and high quality wetland.
3. The development related to the discharge is carried out in compliance with any applicable storm water management zoning ...or storm water discharge permit ...

- Applicant must also meet mitigation requirements.

2018 Wetland Legislation

AB 547/SB 600

281.36 (4n) EXEMPTIONS; CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL WETLANDS.

(c) ...the permitting requirement ...does not apply to any discharge into a nonfederal wetland that occurs outside an urban area and to which all of the following apply:

1. The discharge does not affect more than 3 acres of wetland per parcel.
2. The discharge does not affect a rare and high quality wetland.
3. The development related to the discharge is a structure, such as a building, driveway, or road, with an agricultural purpose.

- Applicant must also meet mitigation requirements.

2018 Wetland Legislation

AB 547/SB 600

281.36 (4n) EXEMPTIONS; CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL WETLANDS.

(d) ...the permitting requirement ...does not apply to any discharge into an artificial wetland.

"Artificial wetland" means a landscape feature where hydrophitic vegetation may be present as a result of human modification to the landscape or hydrology and for which the department has no definitive evidence showing a prior wetland or stream history that existed before August 1, 1991, but does not include any of the following:

- a. A wetland that serves as a fish spawning area or a passage to a fish spawning area.
- b. A wetland created as a result of a mitigation requirement under sub. (3r).

2018 Wetland Legislation

AB 547/SB 600

281.36 (12m) LOCAL REGULATION OF NONFEDERAL OR ARTIFICIAL WETLANDS.

A local government may not enact an ordinance or adopt a resolution regulating a matter regulated under sub. (3n) (d) 1. or (3r) (a) (intro.) or (am), with respect to a discharge exempt from permitting requirements under sub. (4n) (b) or (c), or a matter regulated under sub. (4n). If a local government has in effect on the effective date of this subsection [LRB inserts date], an ordinance or resolution regulating nonfederal wetlands or artificial wetlands, the ordinance or resolution does not apply and may not be enforced.

- Counties may continue to regulate wetland setbacks.
- Bill approved with amendment by WI Assembly & Senate (Feb 20, 2018); waiting for Governor's signature

Questions??

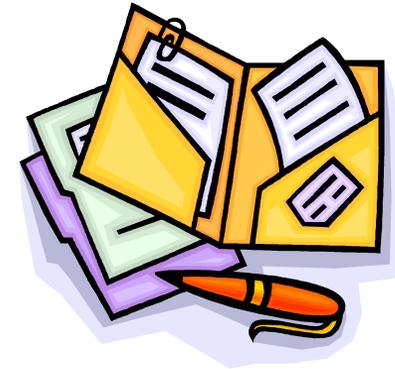
Upcoming workshops

Zoning Boards

- Recent workshop in Baraboo
- April 6 in Shawano
- Calumet?

Local planning & zoning officials

- April 18 - Outagamie County
- Late May - May 31
- Late May - Portage County
- Planning, zoning, subdivision and dev't review, plus effective meetings





Other CLUE work

- Land use game for people new to zoning
 - Portage County Leadership - Anna
 - Green County Leadership - Lynn
- Forest megatrends pub coming this summer

Shoreland pubs available at no cost - still taking orders

