

Town zoning: A good option for your town?

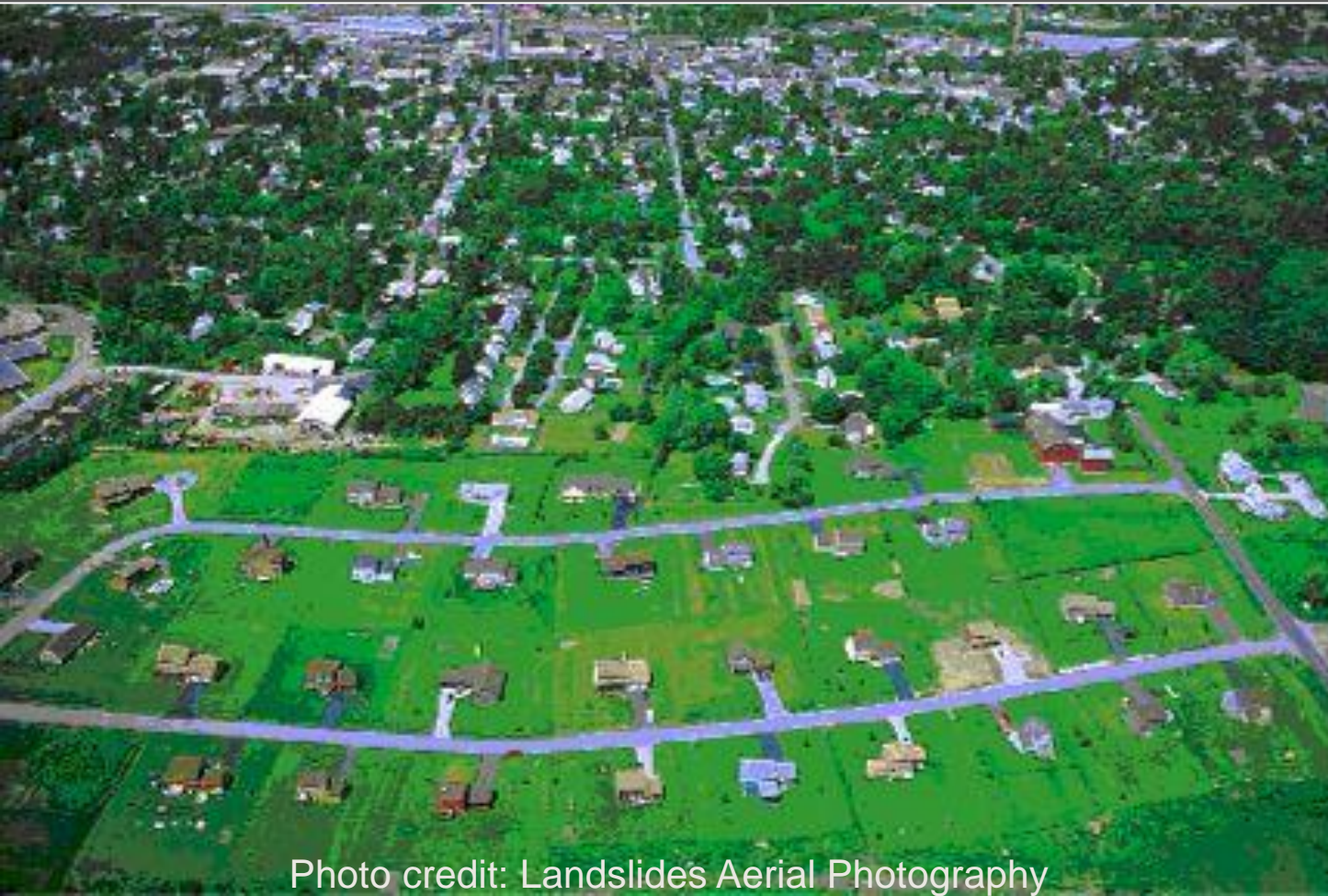


Photo credit: Landslides Aerial Photography

Lynn Markham



Center for Land Use Education
College of Natural Resources
University of Wisconsin-Stevens Point



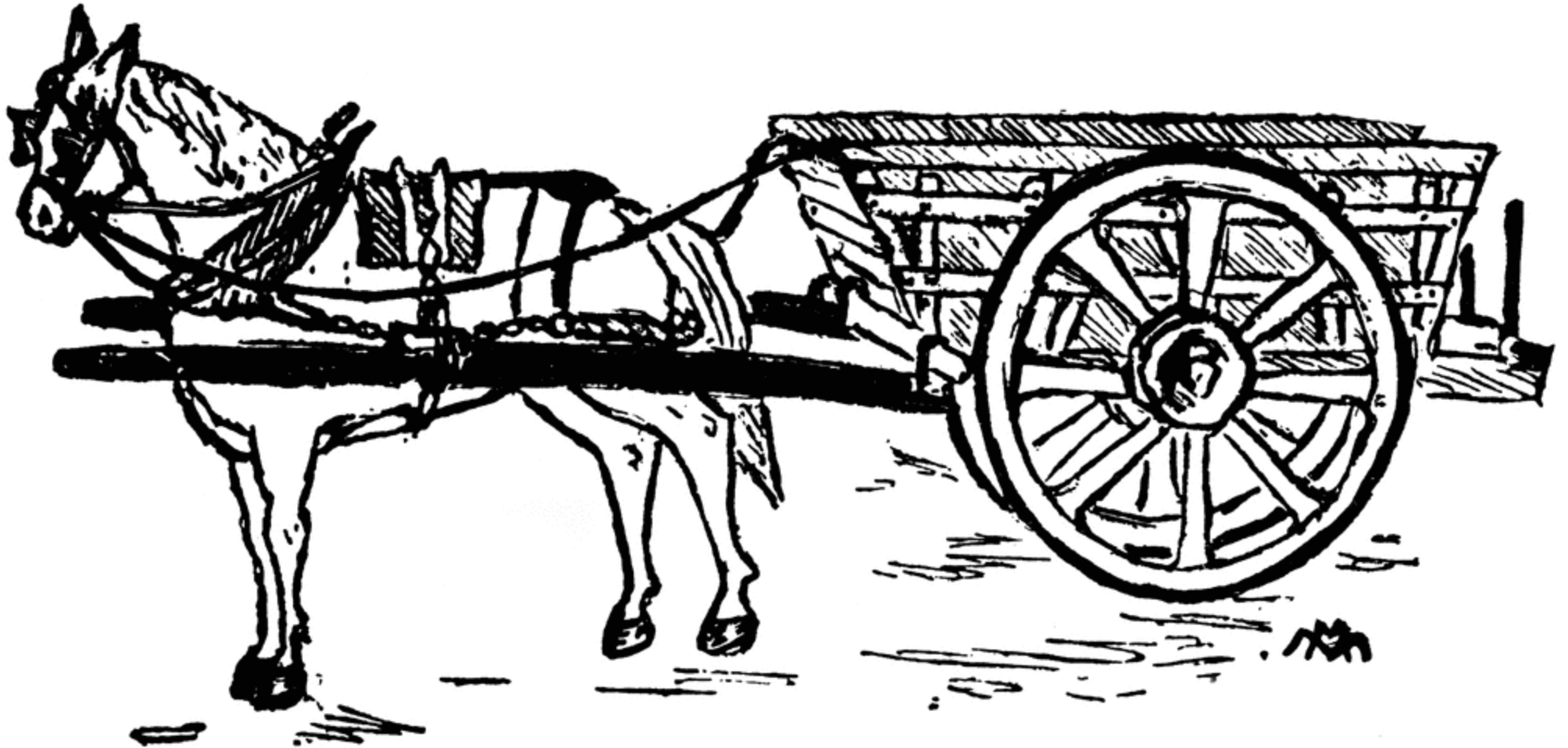
Town of Auburn
May 27, 2015

Main points...

1. Zoning is one tool to implement community plans
2. What does zoning do and what doesn't it do?
3. Factors that influence doing zoning effectively
4. Advantages and disadvantages to town zoning
5. How can zoning affect frac sand proposals?

Comp plan (goals)

Zoning (way to achieve goals)



Does your comp plan clearly describe your goals for the town?

- ⇒ 2009 Town of Auburn comp plan from website
- ⇒ Goal: To recognize that the majority of the Town's land is in agricultural use.
 - Objective: Preserve the majority of the agricultural land for agricultural purposes.
 - Action: Designate a significant amount of farmland for continued agricultural purposes on the future land use plan, Support local farmers in their efforts to remain economically viable.

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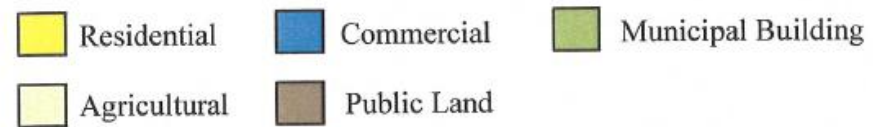
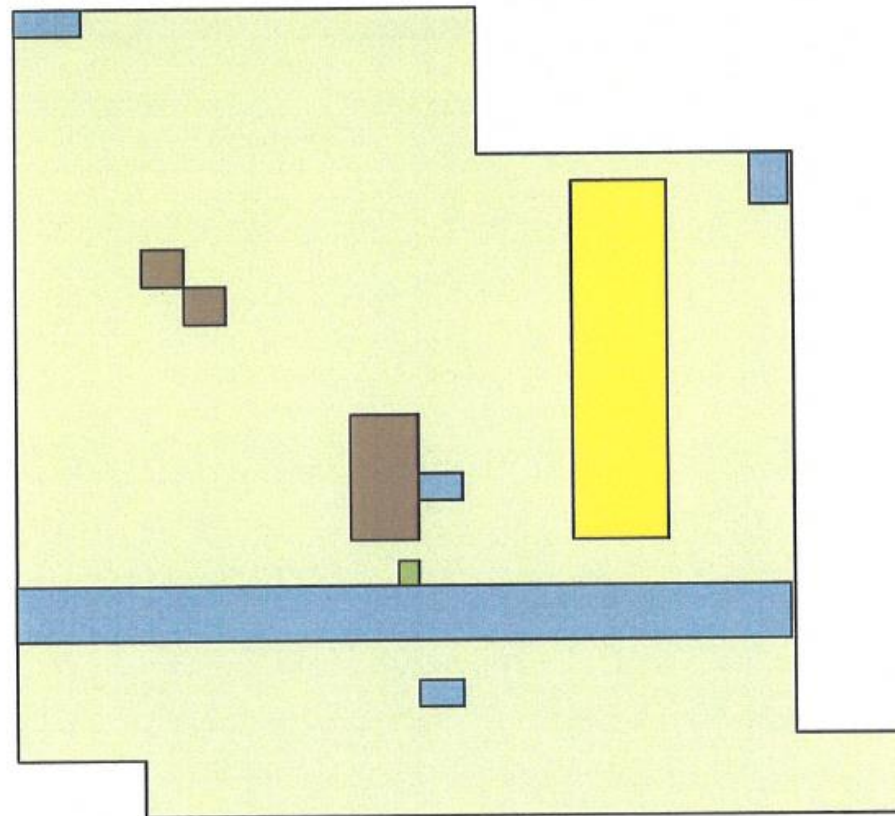
⇒ Goal: To recognize the many natural resources of the area.

- Objective: Respect and protect the environmental corridors in and around the Town of Auburn.
- Action: Consider development of policies and regulations to protect environmentally sensitive areas,

Does your comp plan clearly describe your goals for the town?

- ⇒ Goal: To preserve the rural character of the township while providing for orderly, balanced residential and commercial development.
 - Objective: To create a plan for land use that will guide the Plan Commission, the Town Board, residents and others in making land use decisions.
 - Action: Construct a Future Land Use map to identify areas for residential development, for commercial development, and for preservation.

FUTURE LAND USE MAP



Tools for implementing community plans

- ⇒ Zoning
- ⇒ Education programs
- ⇒ Tax incentives
- ⇒ Outright purchase
- ⇒ PDR/TDR
- ⇒ Subdivision Regulations
- ⇒ Cluster development
- ⇒ User fees
- ⇒ Driveway ordinances
- ⇒ Urban growth boundaries
- ⇒ Aesthetic ordinances
- ⇒ Etc. etc. etc.

Combining Strategies

More than one tool is often required to achieve optimum performance



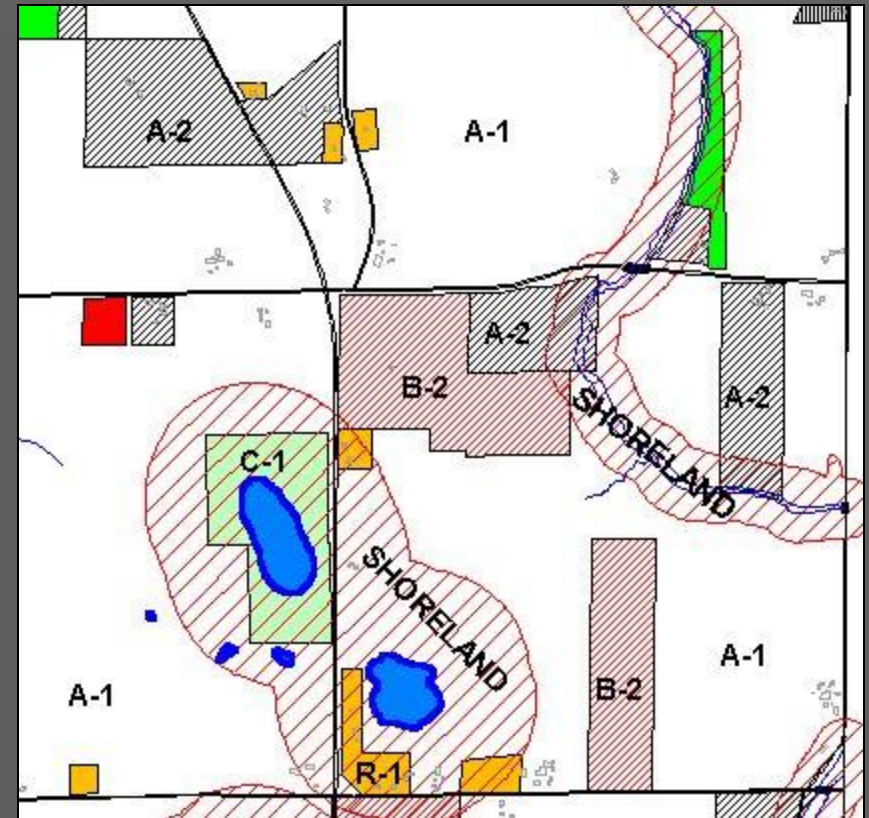
What is zoning?

- Zoning is one of the most common methods of land use control used by local governments.
- Zoning regulates how a parcel of land in a community may be used and the density of development.
- Zoning may also regulate the height, shape, bulk or placement of structures and lot sizes or shapes.
- Zoning standards vary greatly from community to community. Other than state standards for shorelands and highway setbacks, local communities have great flexibility.
- The intent of zoning is to balance individual property rights with the interests of the community to create a healthy, safe and orderly living environment.

Zoning operates on 2 scales

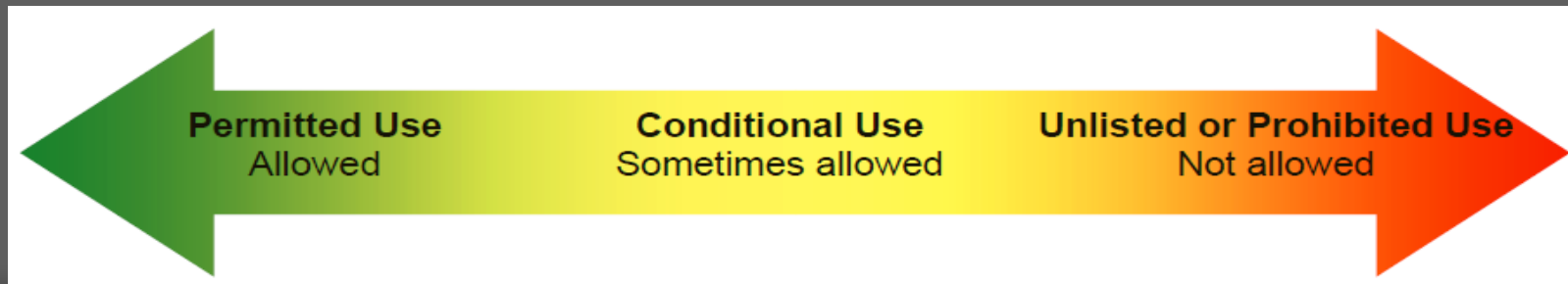
Landscape scale:

- Zoning map divides the community into districts
- Minimizes conflicts between incompatible land uses
- Encourages mix of compatible uses



Zoning – Allowable Uses

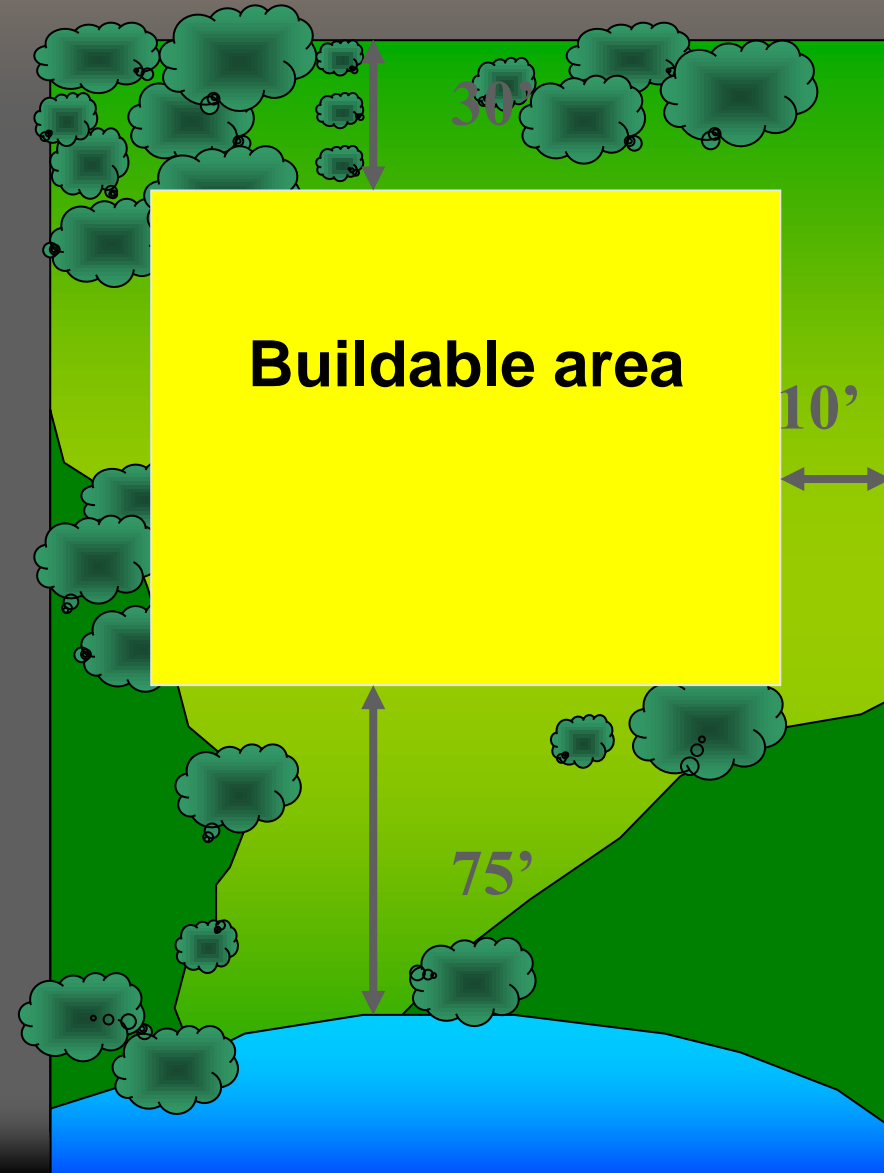
1. **Permitted Use** – a use that is listed and allowed by right in all parts of a zoning district (granted by zoning administrator)
2. **Conditional Use** – a use that is listed for a district and may be allowed if suited to the location (decided by plan commission, zoning board or governing body)
3. **Unlisted or Prohibited Use** – a use that is expressly prohibited or not listed for the district is not allowed



Zoning operates on 2 scales

Parcel scale:

- Regulate intensity of development on a parcel
 - Lot size
 - Density
- Regulate size and location of buildings on parcel
 - Setbacks
 - Floor area ratios
 - Building height standards



What does zoning require?

⇒ 2 acre minimum lot sizes?

Only if local ordinance
says so

⇒ No trailers allowed in driveways?

Only if local ordinance
says so

⇒ 75 foot setback for homes from water?

Required by state
shoreland zoning,
administered by
county

Zoning is not...

- ⇒ Sufficient to achieve all goals in a comprehensive plan
- ⇒ An effective way to address existing uses or structures that were in place before the current ordinance was adopted

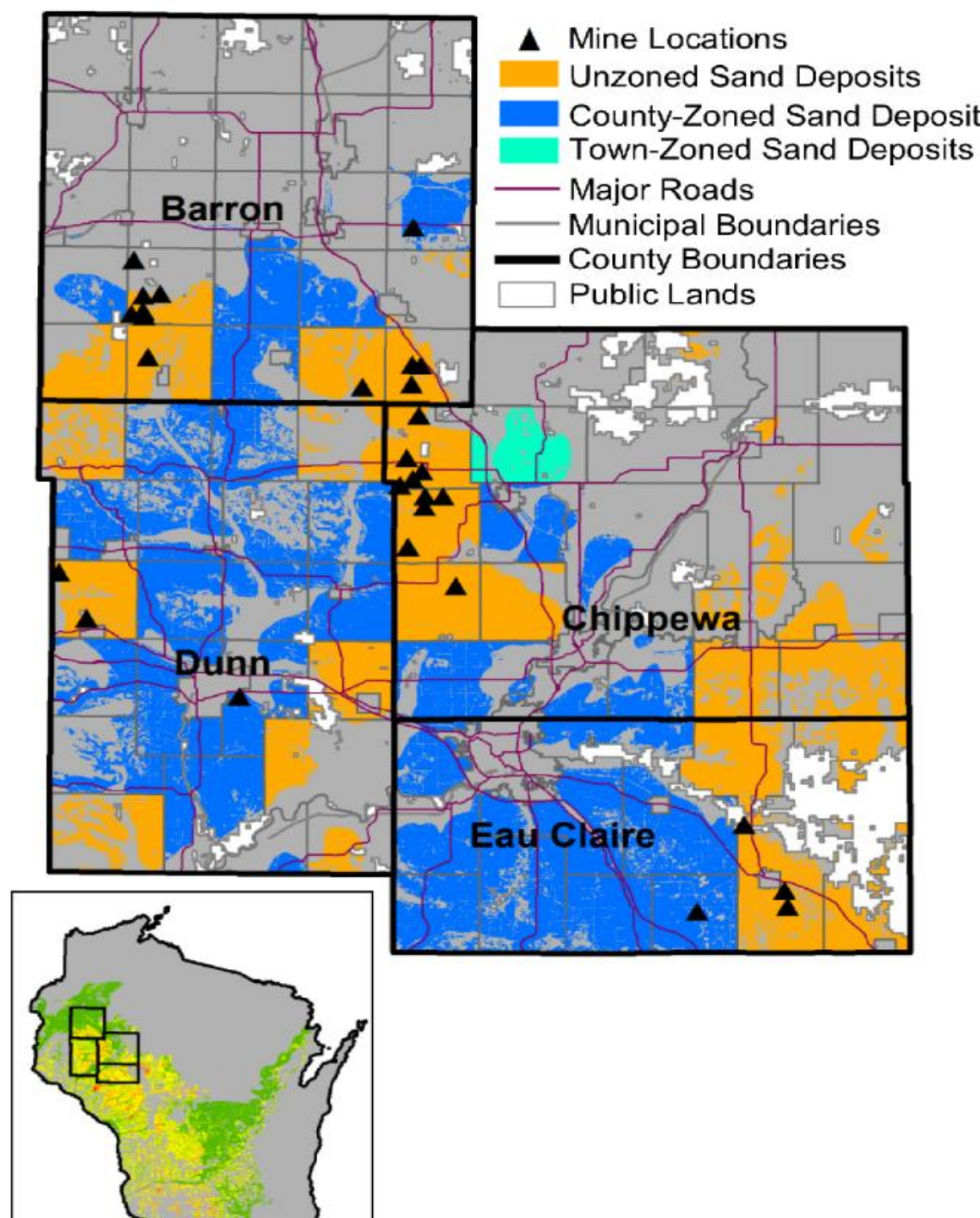
...regardless of who administers it

➤ **Frac Sand Mines are Preferentially Sited in Unzoned Rural Areas**

Locke, in Review at PLOS ONE

➤ **Figure 4. Four of the Wisconsin counties where frac sand mines clustered in unzoned jurisdictions.** In seven of the nine counties having some unzoned land and at least three frac sand mines, mines were more concentrated in unzoned areas than would be expected due to geological suitability and transportation proximity alone.

➤ The predicted mine count in unzoned townships (statewide) was over two times higher than that in zoned townships.



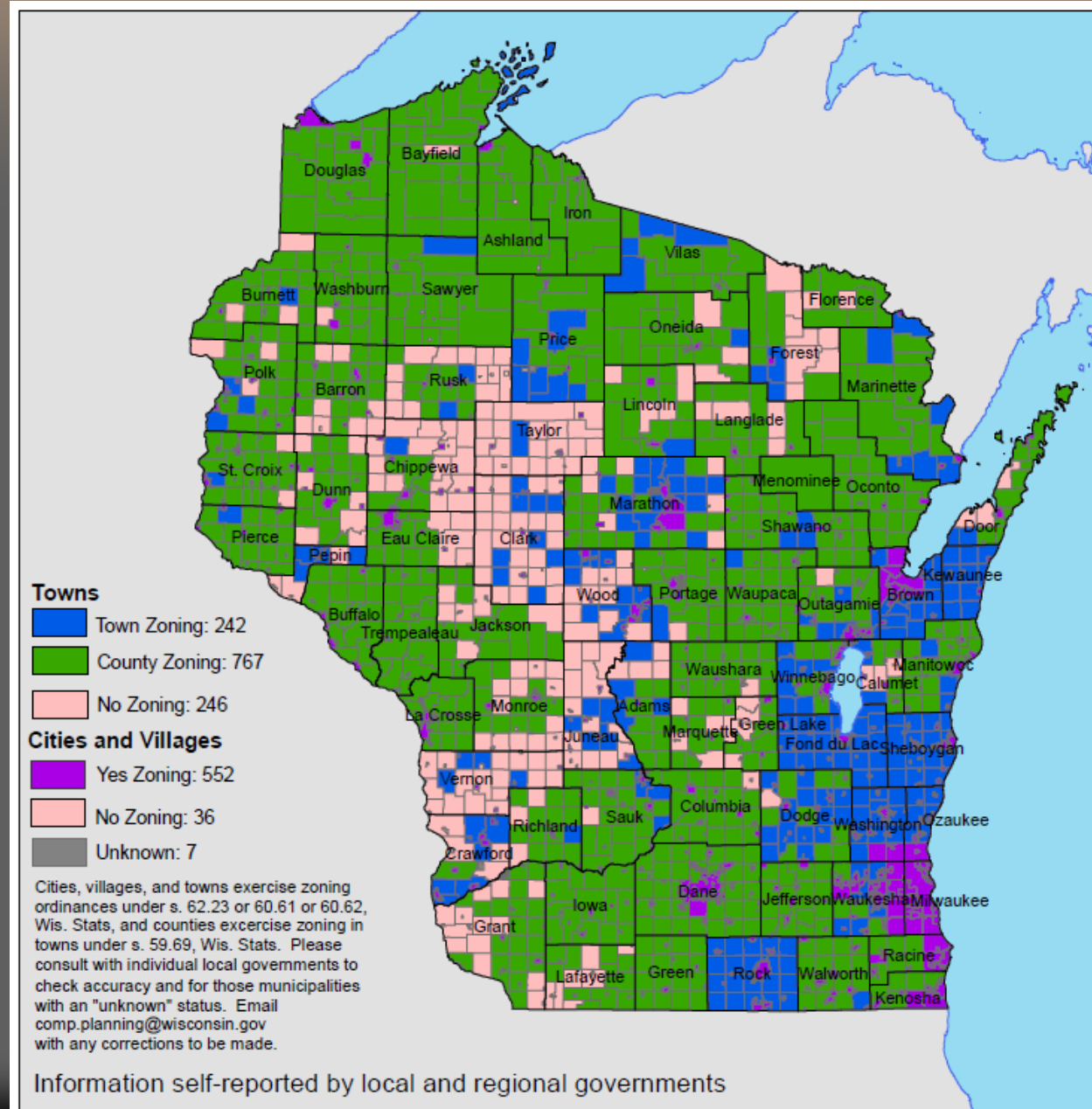
Who has zoning?

Counties

- Required to administer shoreland/wetland zoning
- County-town zoning is optional in towns. If towns enter county-town zoning, they may opt out when there is a comprehensive revision. Amending county-town zoning only happens when the county and the majority of towns affected agree to the amendment.

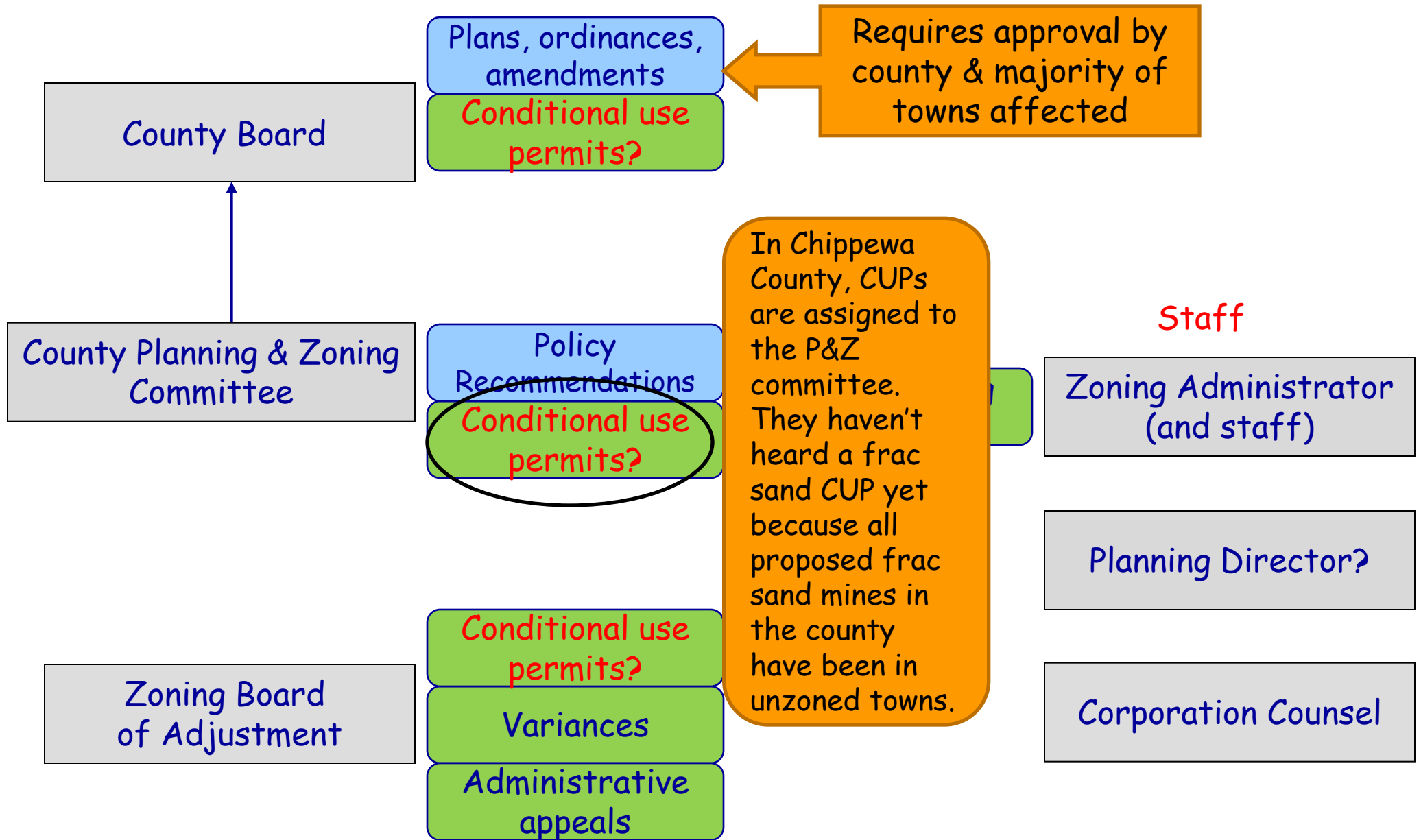
Towns

- May adopt general zoning if no county zoning or after adoption of village powers and approval by county board. Zoning may be amended if county and town approve.



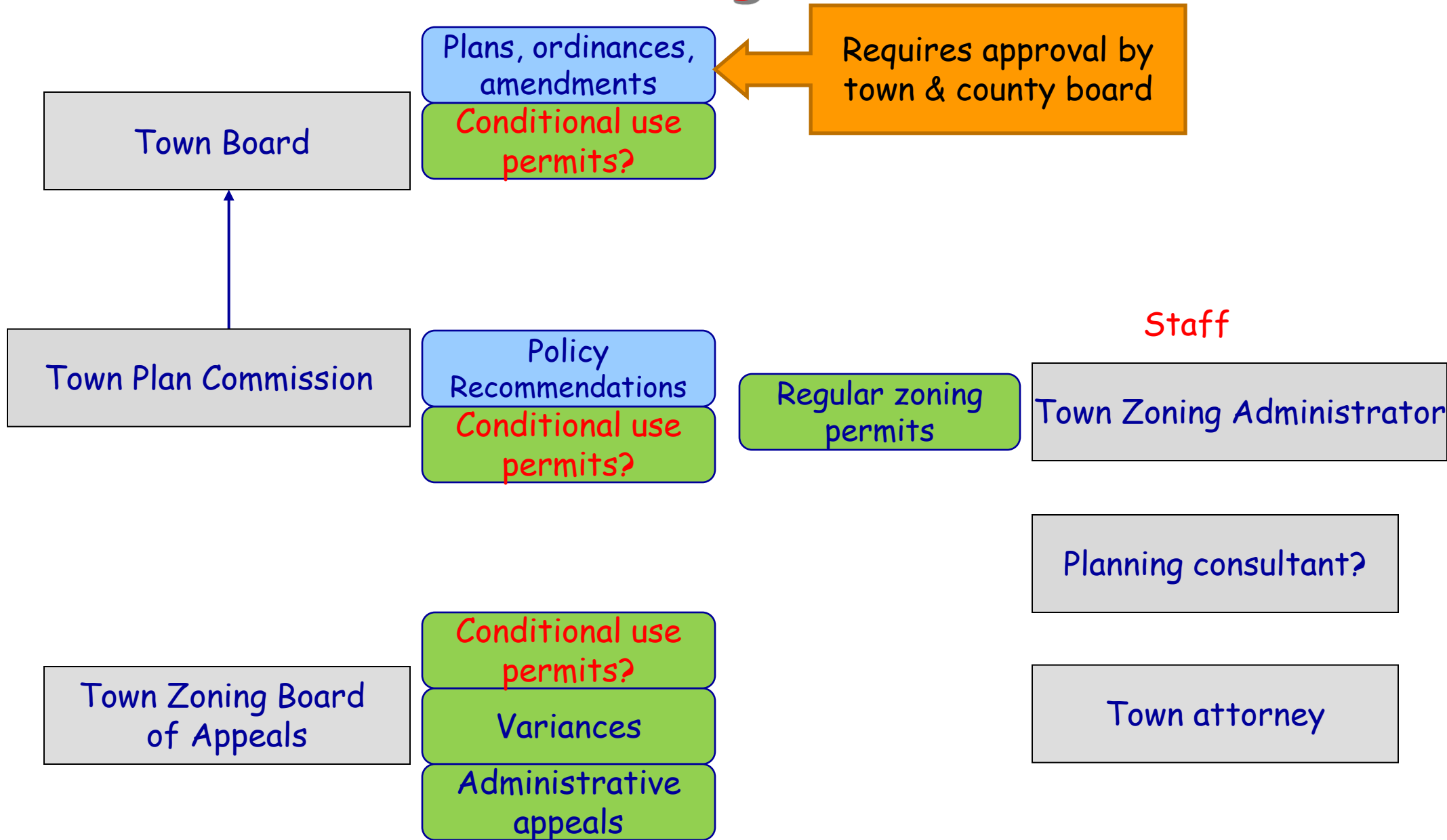
Who does county-town zoning?

Policy-Making
Zoning



Who does town zoning?

 Policy-Making
 Zoning



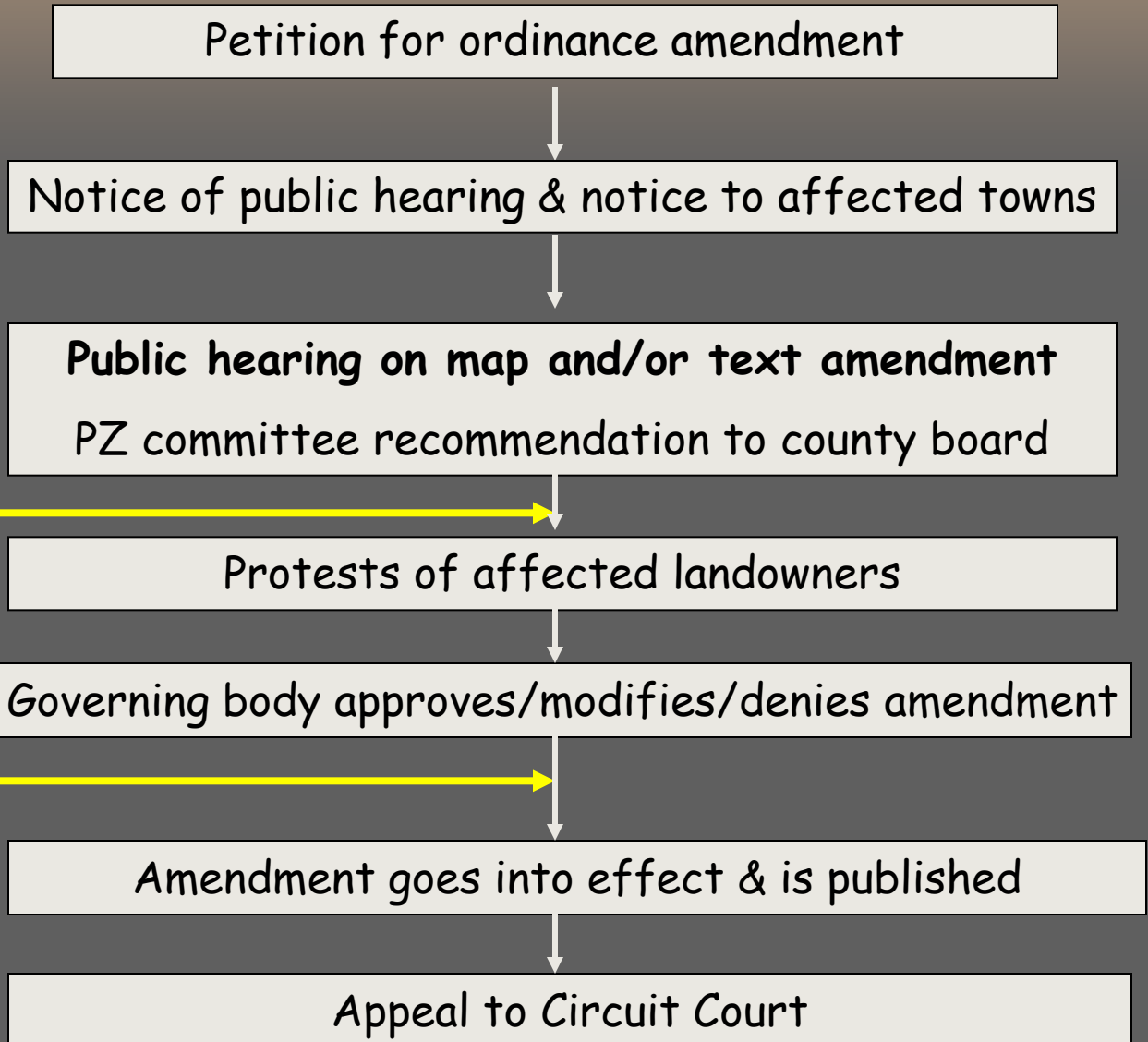
County-town Zoning Ordinance Amendment Process

Stage 1 for towns

If town disapproves, PZ must
revise proposal or recommend
denial of amendment

Stage 2 of for towns

If majority of affected towns
disapprove, amendment does not
take effect



Factors that influence doing zoning well

- ⇒ Current comprehensive plan with clear goals and detailed actions to achieve them

Factors that influence doing zoning well

⇒ A trained, talented, tactful zoning administrator

- Typical education: college degree in land use, geography, public administration or natural resources
- In controversial land use situations, 5-10 years of experience strongly recommended
- Full-time administrators get \$30-70K + benefits
- Experience and tact result in informed, consistent zoning decisions and limit lawsuits

Factors that influence doing zoning well

⇒ Approaches to hiring a zoning administrator in an area with land use controversy

- A part-time zoning administrator shared with several other towns
- Full-time zoning administrator who probably also does building inspection, roads, etc.
- Assigning zoning administrator duties to a town chair or clerk is not recommended

Factors that influence doing zoning well

⇒ Town attorney

- Draft ordinance
- Draft ordinance amendments
- Provide counsel for plan commission
- Separate attorney to counsel board of appeals
- Typically paid \$100+ per hour

Factors that influence doing zoning well

⇒ Qualified, trained residents to serve on **plan commission**

- 5 members for towns with population less than 2,500
- Have time to devote to zoning as well as town planning
- Attend training related to planning and zoning
- Recommend ordinance goals
- Oversee drafting of zoning ordinance with detailed provisions
- Recommend ordinance & amendments to town board
- May decide conditional uses

Factors that influence doing zoning well

⇒ Qualified, trained residents to serve on zoning board of appeals

- 7 residents (5 regulars + 2 alternates) to serve
- We recommend no overlap between BOA members and PC and town board members
- Learn zoning ordinance
- Act like judges to decide on variances and administrative appeals; perhaps conditional uses; BOA decisions more likely to be appealed than town board decisions

Factors that influence doing zoning well

⇒ Zoning board of appeals continued

- Recommend ordinance amendments to plan commission
- Annual training strongly recommended to learn about and stay current on state statutes and court decisions. Center for Land Use Education offers 5 hour training sessions for \$35/person.
- Typically paid \$25-80 per meeting plus mileage

Town zoning

➡ Advantages

- Town acts independently outside of shoreland and floodplain areas to:
 - Administer ordinance
 - Decide variances, conditional uses and administrative appeals

➡ ??

- Town needs county approval (in counties with general zoning) to adopt and amend town zoning. County can veto amendments.
- Town must find 7 people to be trained for and serve on board of appeals. Recommended that these people are not PC or Town Board members.

Town zoning

⇒ Disadvantages

■ Town must pay for:

- Zoning administrator (pay and benefits, office, computer and supplies, vehicle & fuel, training to stay current)
- Attorney/consultant to draft ordinance & amendments
- Board of appeals
- Additional PC meetings
- Attorney to represent town if zoning decisions are appealed to court
- Training of PC and zoning board of appeals members
- Public notices

Town zoning

➡ Disadvantages

- Zoning approach may be inconsistent with nearby municipalities
- “We’re all neighbors” factor



From Brian Ohm, Land Use Attorney at UW-Madison

- ⇒ Wis. Stat. sec. 295.20(2) specifies the limitations on zoning related to registered nonmetallic mining sites.
- ⇒ Special notice requirements are also required when the town adopts its comprehensive plan under 66.1001(4) if there are registered deposits.

- ⇒ **Wisconsin Statutes 295.20 Preservation of marketable nonmetallic mineral deposits.**
- ⇒ **(2) LIMITATION ON ZONING.**
- ⇒ **(a) A county, city, village or town may not** by zoning, rezoning, granting a variance, or other official action or inaction, permit the erection of permanent structures upon, or otherwise permit the use of, any land, while a registration under this section is in effect for that land, in a manner that would **permanently interfere with the present or future extraction of the nonmetallic mineral deposit that is located on the land.**
- ⇒ **(b)**
- ⇒ **1. A county, city, village or town may enact an ordinance changing the zoning of land that is registered under this section if mining has not begun on any portion of the registered land** and the ordinance is necessary to implement a master plan, comprehensive plan or land use plan that was adopted at least one year before the rezoning.
- ⇒ **2. A zoning change authorized by subd. 1 does not apply to the registered land during the registration period in effect when the zoning ordinance takes effect or during the 10-year renewal period under sub. (4) (e) or (f) if the land is eligible for that renewal.**
- ⇒ **(3) EXCEPTIONS.** Nothing in this section shall be construed to prohibit the following:
- ⇒ **(a)** A use of land permissible under a zoning ordinance in effect on the day before a mineral deposit is registered under sub. (1).
- ⇒ **(b)** Acquisition of a registered nonmetallic mineral deposit or registered buffer area by a county, city, village or town or other governmental unit for a public purpose.

Frac sand court decisions

⇒ Zweifelhofer v. Town of Cooks Valley, 2012

A non-zoning ordinance cannot define in which locations a land use is and is not allowed

⇒ O'Connor v. Buffalo County Board of Adjustment, 2014

Court of Appeals found nothing in Wisconsin statutes or case law that prevented Rolling Acres from submitting a second CUP application. The Court acknowledged that a local government may enact a rule prohibiting a party whose application has been denied from filing a new application absent a substantial change in circumstances. In this case, Buffalo County did not have such a limitation.

Frac sand court decisions

- ⇒ Overall, very limited case law about frac sand mining
- ⇒ No decisions about using density or distance to limit frac sand mine location
- ⇒ Setbacks used for other land uses, such as CAFOs and wind turbines. State of WI has now set statewide standard setbacks for these uses.
- ⇒ A town or county can try anything to regulate sand mines, and see if they get sued

In conclusion...

1. Comprehensive planning with community goals comes first, then zoning as one tool to implement your plan
2. Frac sand mines are being located preferentially in unzoned towns
3. Zoning by any local government requires
 - a trained zoning administrator
 - attorney to handle zoning development, amendment and lawsuits
 - plan commission members
 - board of appeals members and
 - budget to pay all of the above
4. Town zoning is an option when the town has sufficient funds, background knowledge, and residents to serve on the plan commission and board of appeals

Possible next steps

- ➡ Revisit town comprehensive plan and clarify land use goals for your town. Chippewa County will offer this chance to all towns this summer as part of Farmland Preservation planning.
- ➡ What do you want your town to look like in 20 years? What is the best long-term land use for existing frac sand mines? County Land Conservation & Forest Management is working with interested mining companies to try some post-mine land uses to see if grazing and prairie work long-term.
- ➡ Consider whether your town has what's necessary to develop, administer and defend their own zoning
- ➡ Read existing zoning ordinances such as Chippewa County, Town of Bloomer, etc.: What do you like, not like?
- ➡ Let me know if you have more questions.

Thank you



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Comments?
Questions?

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