

History of zoning in WI



"Timber living and dead, inextricably intermingled . . ."



Abandoned.

Courtesy W. A. Rowland



Eric Olson
Revised by Lynn Markham
Center for Land Use Education
2019 Zoning Leadership

Overview...

- **How we got here (history)**
- **Where we are today**

Goals:

- **Learn some of the early zoning stories**
- **Have fun working with your “court” in deciding on zoning cases**

The True Stories of Zoning and Planning

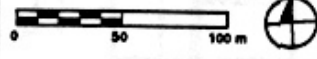
- **A) The Early Years (1800s-1970)**
- **B) The Modern Era (1970-present)**
- **Goal: To illustrate how Wisconsin (and others) have sought to use land use planning and zoning to deal with problems, and how these efforts have regularly been accompanied by unanticipated challenges. This is an ongoing project.**

Old School Planning (circa 10,000 bc – 1950)

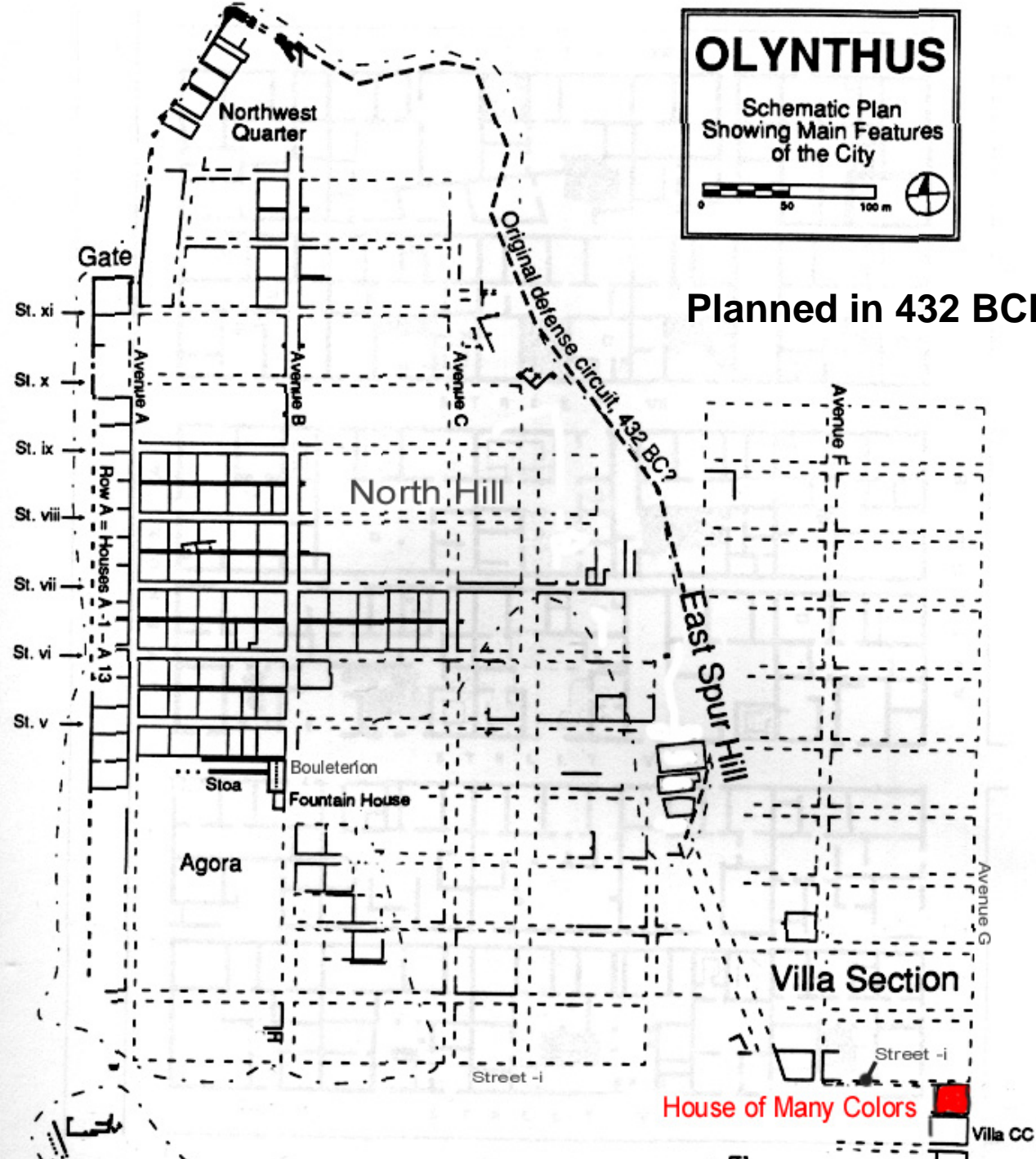
- **Focused on new cities and their layout**
- **Was “orthogonal” – emphasis on clean geometry, looked good on paper...**

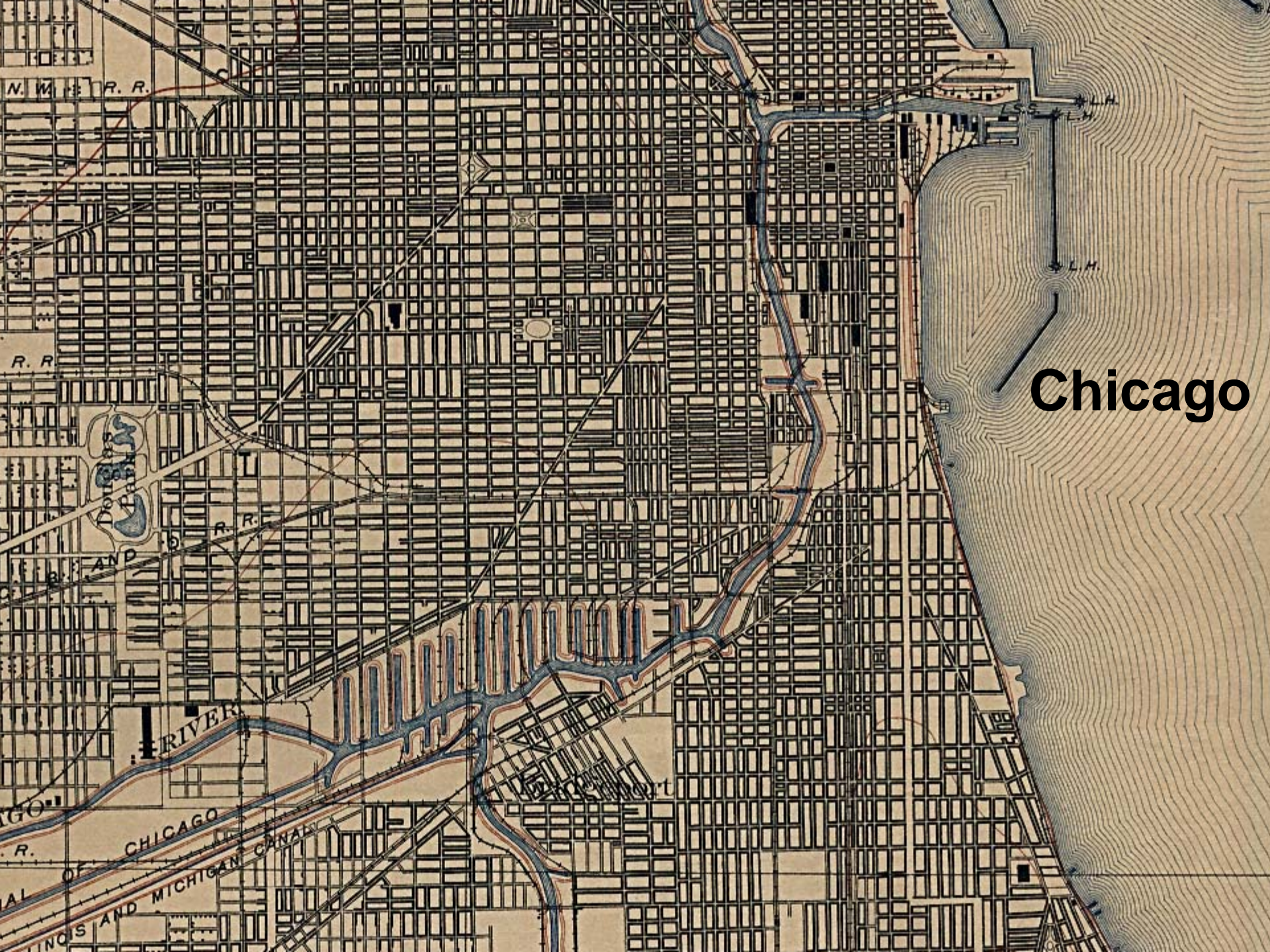
OLYNTHUS

Schematic Plan
Showing Main Features
of the City



Planned in 432 BCE





Chicago

Some basic points about zoning...

- 1. Zoning was born out of the desire/need to isolate incompatible uses in urban environments.**
 - 1911 Triangle factory fire in NYC killed 146 garment workers
 - Mix of industrial uses with tenement housing in cities
- 2. It has b
commu**
- 3. Zoning
occasic**
- 4. The rela
still bei**



History of Zoning: How it Started

- **Earliest origins trace back to Germany and France in the 19th Century**
- **Developed to manage relatively dense populations**
- **In the 1910s, officials in New York City utilized the German zoning example to develop urban zoning codes**
- **Thus, zoning had a “reactionary” and highly urban origin in the U.S.**

History of Zoning: It's Wild Success

- **The same authors of the NYC zoning ordinance drafted the U.S. Standard Zoning Enabling Act, published in 1926**

DEPARTMENT OF COMMERCE
HERBERT HOOVER, SECRETARY

**A STANDARD
STATE ZONING ENABLING ACT**


**UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING
REGULATIONS**

BY THE
ADVISORY COMMITTEE ON ZONING
APPOINTED BY SECRETARY HOOVER

CHARLES B. BALL	Sanitary Engineer.	Secretary-Treasurer, City Planning Division, American Society of Civil Engineers.
EDWARD M. BASSETT	Lawyer.	Counsel, Zoning Committee of New York.
ALFRED BETTMAN	Lawyer.	Director, National Conference on City Planning.
IRVING B. HIETT	Realtor.	Ex-President, National Association of Real Estate Boards.
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MORRIS KNOWLES	Consulting Engineer.	From the Chamber of Commerce of the United States; Chairman, City Planning Division, American Society of Civil Engineers.
NELSON P. LEWIS *	Municipal Engineer.	From the National Conference on City Planning and National Municipal League; Past Presi- dent, American City Planning Institute.
J. HORACE McFARLAND	Master Printer and Clerk Investigator.	Ex-President, The American Civic Association.
FREDERICK LAW OLMSTED	Landscape Architect.	Ex-President, The American Society of Land- scape Architects; Ex-President, American City Planning Institute.
LAWRENCE VEILLER	Housing Expert.	Secretary and Director, The National Housing Association.

* Deceased.

JOHN M. GRIES
Chief, Division of Building and Housing, Bureau of Standards
Department of Commerce



[Revised Edition, 1924]

History of Zoning: It's Wild Success

- **Zoning swept the nation; by the end of the 1920's most cities were zoned**
- **Milwaukee County sought legislative approval for county-wide zoning in 1925 to better manage “unregulated expansion of commerce and industry into the countryside, destroying nearby residential values.”**

Can you describe land rights?



A bundle of rights, a basket of fruit!

Private interests in land

A bundle of divisible **rights**:

- Exclude others
- Will to heirs
- Sell or transfer title
- Divide lands
- Grant easements
- Rent or lease
- Develop for agriculture, residential use, mining, etc.
subject to reasonable regulation
- Riparian rights (remain with title)

Rights & responsibilities come hand-in-hand

Rights in land are accompanied by **responsibilities** for its reasonable use.

- Some are codified in government regulations.
Regulations represent formal public agreement on minimally acceptable land use standards.
- Others are based on societal ideas about acceptable stewardship.
The market place cannot substitute for a “responsibility” or land stewardship ethic.

“...if regulation goes too far it will be recognized as a *taking*.”

***Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922)**



VILLAGE OF EUCLID ET AL. v. AMBLER REALTY COMPANY (1926)

- A zoning ordinance is constitutionally valid when it bears a substantial relation to the health, safety, convenience, and general welfare of the inhabitants.
- Zoning ordinances can forbid industrial development in certain areas.

History of Zoning: Zoning Moves to the Country

- **As the 1920's came to a close in Wisconsin, the UW Extension and others sought solutions to the problems of the cutover**



"Timber living and dead, inextricably intermingled . . ."

Great fires of the Midwest, 1871



**Prize Winning Cabbage
Burnett County, 1895**



0XVI

Farm Family with Copious Produce Marinette County, 1895



45-09801-45



45-09801-45



Abandoned.

Courtesy W. A. Rowlands

History of Zoning: Zoning Moves to the Country

- **1929, the Legislature amended the county zoning statutes to permit all counties to zone**
- **1931 Attorney General opinion on the constitutionality of county zoning...**

History of Zoning: Zoning Moves to the Country

“The county zoning ordinance is undoubtedly in the public welfare. The cut-over areas of northern Wisconsin speak as eloquently against haphazard development as any city condition...”

“...I believe the judicial tendency is going to be to recognize more and more the great social evil of uncorrelated and unrestrained individual and selfish enterprise, and hence to broaden its views of the power of government to plan the social and economic conditions of the present and the future.”

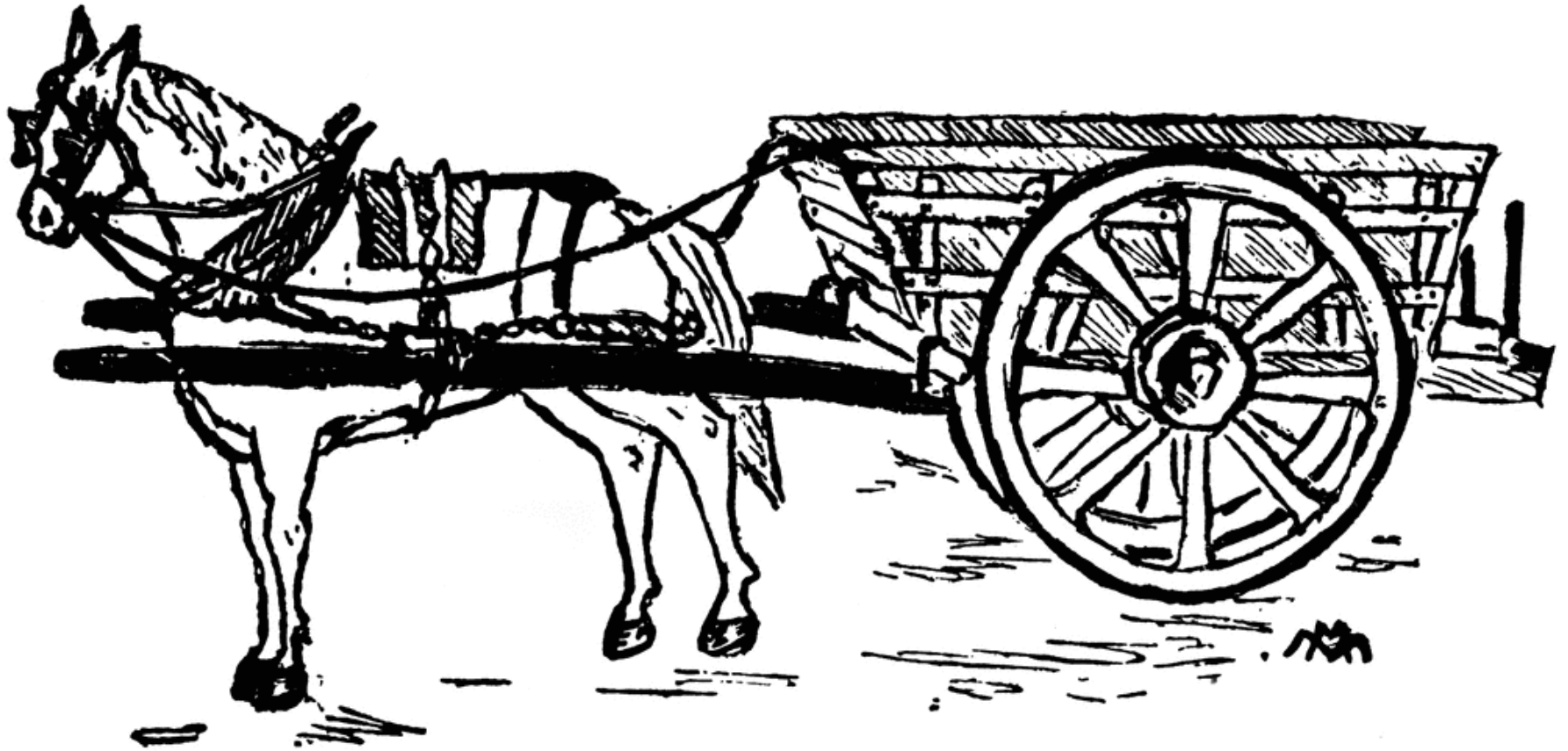
– Attorney General Fred W. Wylie

History of Zoning: Zoning Moves to the Country

- **Rural zoning was “smart growth” ahead of its time (fiscally motivated)**
- **Three zones were allowed: farming, forestry, and “recreation”**
- **Zoning was only one part of a suite of efforts meant to deal with scattered settlement**

Plan (goals)

Zoning (way to achieve goals)

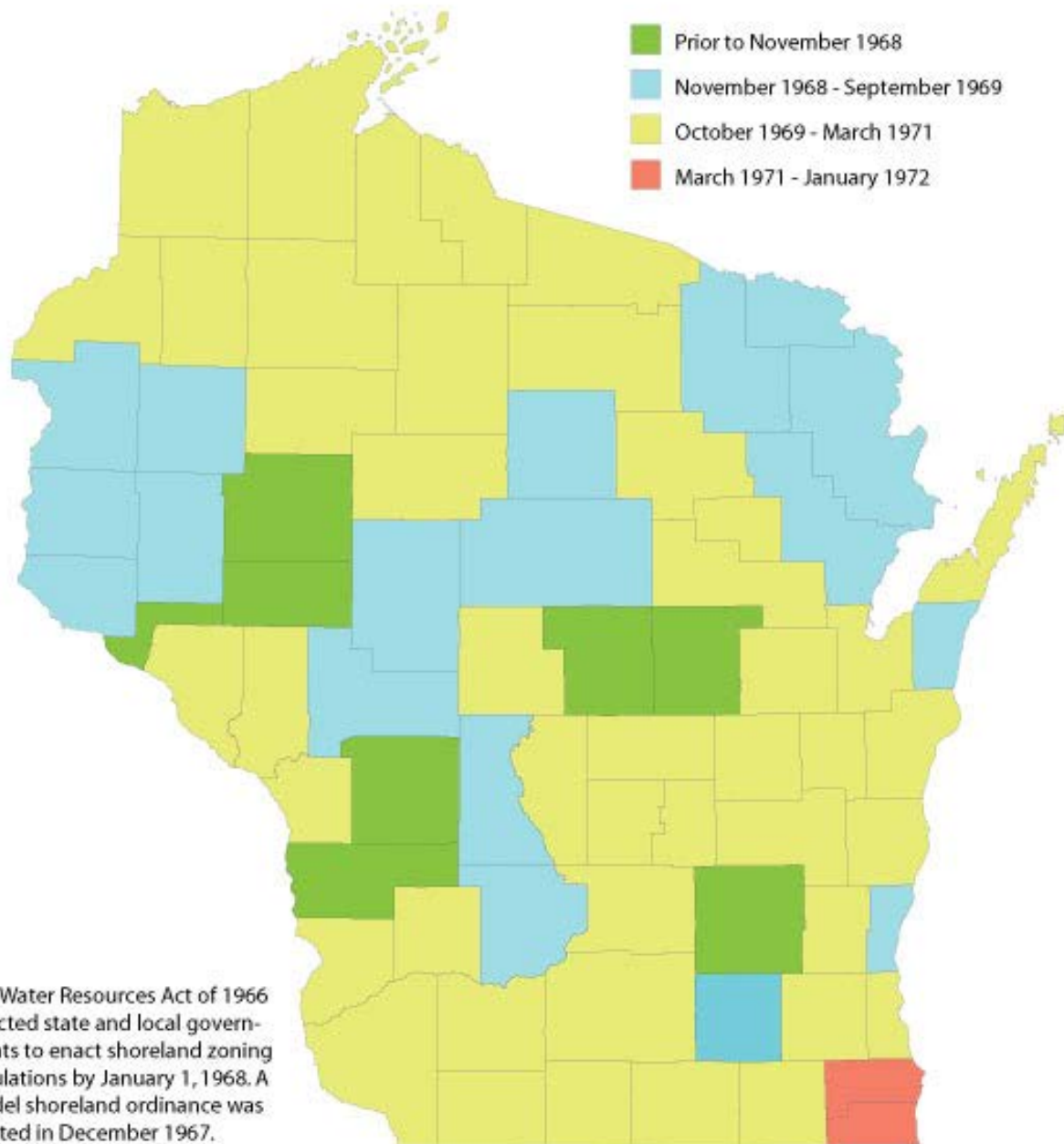


Zoning in the Modern Era (1970-present)

- **The 1965 Wisconsin Water Resources act begets shoreland zoning and more**

Want to learn more about the history behind adopting the WI Water Resources Act?

County Adoption of Original NR 115 Zoning Requirements



The Water Resources Act of 1966 directed state and local governments to enact shoreland zoning regulations by January 1, 1968. A model shoreland ordinance was created in December 1967.

Zoning in the Modern Era (1970-present)

- **The 1965 Wisconsin Water Resources act begets shoreland zoning and more**
- **For many counties, NR115 awoke the zoning giant who had slumbered since WWII**
- **The pace and scale of shoreland development (and associated prices) was rather unprecedented in rural WI**

“Recreation” circa 1930



HARMONY GROVE, COLUMBIA COUNTY (LAKE WISCONSIN)

1940
1968
2005



Just v Marinette, 1972

Facts:

- In 1961 the Justs purchased 36 acres along a lake in Marinette Co.
- WI Water Resource Act, passed by WI Legislature in 1965, included shoreland zoning, which included shoreland-wetland protection
- Marinette County adopted their Shoreland Zoning Ordinance in 1967. The ordinance required a conditional use permit (CUP) for filling of more than 500 sf of any wetland which is contiguous to the water
- In 1968, six months after the ordinance became effective, Mr. Just, without securing a CUP, hauled 1,040 square yards of sand onto this property and filled a wetland area near the shoreline
- When the Justs were fined for filling wetlands on their land without the required CUP, they claimed that the restrictions on their property imposed by the Marinette County Shoreland Zoning Ordinance were unconstitutional because they constituted a taking of land without just compensation.

Wetland Fact Sheet Marinette County, WI



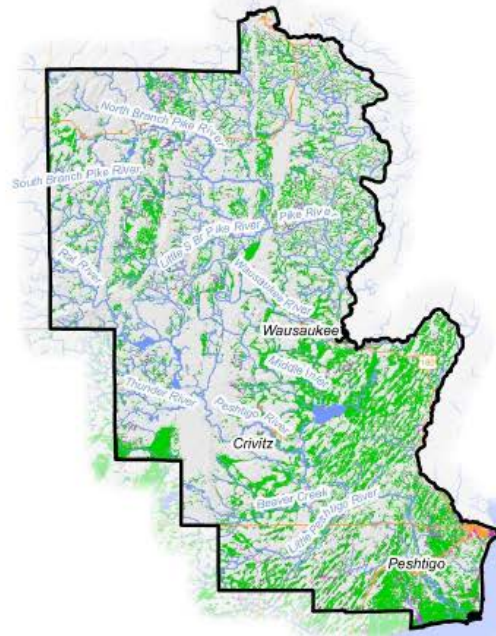
Estimated Acres:	County 914,726	Current Wetlands 230,657	Potentially Restorable Wetlands 37,862
% Land Cover:	100%	25%	4%

History and humans have been unkind to wetlands. Not too long ago we considered wetlands wastelands -- areas that were best suited to be drained, filled, or used as garbage dumps.

These activities resulted in the loss of about half the historic wetlands in Wisconsin.

Today we understand the crucial role that wetlands play in maintaining the health of our waters. We also know that there is value in restoring natural wetland services.

Wetlands provide:



- Mapped Wetlands
- Potentially Restorable Wetlands
- Urban & Roads
- Lakes & Rivers

Just v Marinette, 1972

Was shoreland zoning that limited wetland filling a taking?

Why or why not?

Just v Marinette, 1972

Holding:

The WI Supreme Court held that the Marinette shoreland zoning ordinance was constitutional, and that the prohibition contained in the ordinance against the filling of wetlands in the shoreland area was not a compensable taking because it preserved nature and natural resources as they were created, and to which the public had a present right.

Just v Marinette, 1972

Holding:

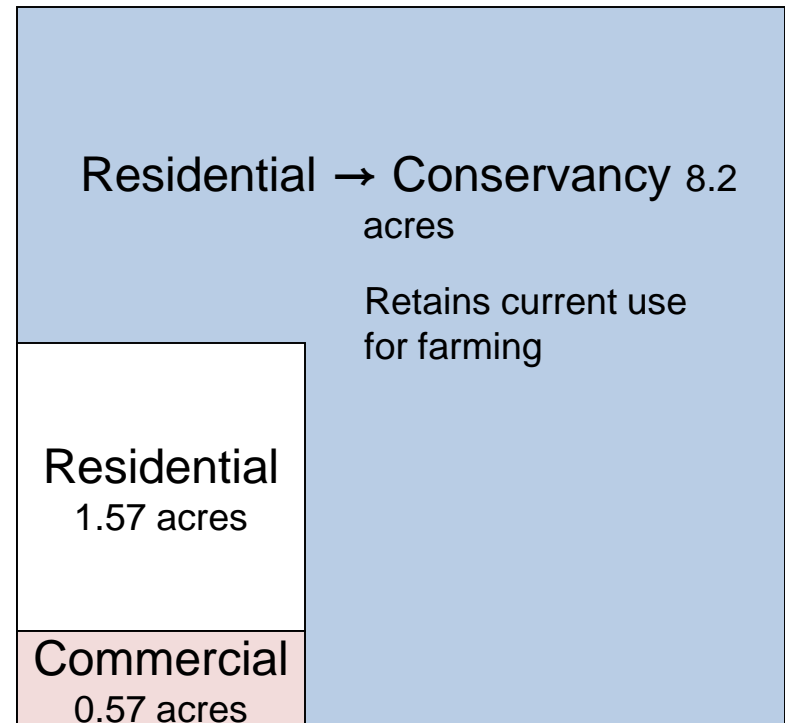
“An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others. The exercise of the police power in zoning must be reasonable and we think it is not an unreasonable exercise of that power to prevent harm to public rights by limiting the use of private property to its natural uses.”

Land is not a 401(k), but at best a risky investment.

Zealy Case, 1996

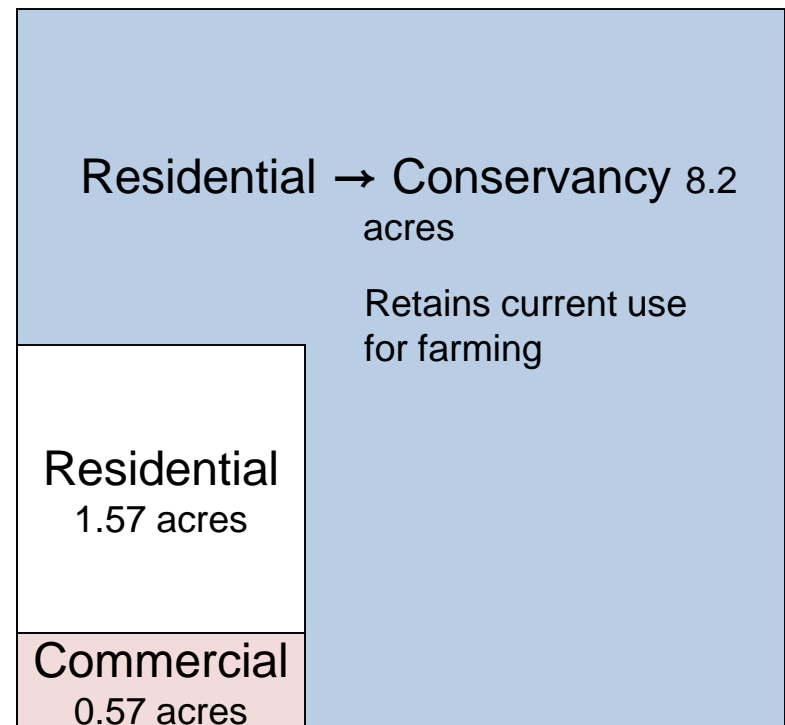
- Facts: In 1985, the city changed the zoning on approximately 28.6 acres of land from residential to a conservancy district in order to protect wetlands.
- Included in the conservancy district were 8.2 acres of Zealy's 10.4 acre parcel.
- Before rezoning, the city assessed the value of the 10.4 acres at \$81,000; after the rezoning the property was assessed at \$57,000.
- Zealy claimed the value of the 8.2 acres if developed for residential use, would be \$200,000.
- The 8.2 acres of land rezoned from R-1 to C-1 may still be used for its historical use, farming.

- Is this a regulatory taking?
- Why or why not?



No. “Zealy did not suffer the loss of substantially all of the beneficial uses of his land...The parcel retains substantial uses.”

Property owners obtain no vested rights in a particular type of zoning solely through reliance on the zoning.



Lucas v. South Carolina Coastal Council



Closer View of dunes and both of Lucas's lots from the beach, looking towards northeast. As before, square house is between Lucas's lots.

Facts:

- In 1986, Lucas bought two residential lots on a South Carolina barrier island. He intended to build single-family homes on the adjacent lots. In 1988, the state legislature enacted a law which barred Lucas from erecting permanent habitable structures on his land. The law aimed to protect erosion and destruction of barrier islands. Lucas sued and won a large monetary judgment. The state appealed.

- Question
- Does the construction ban depriving Lucas of all economically viable use of his property amount to a "taking" calling for "just compensation"?

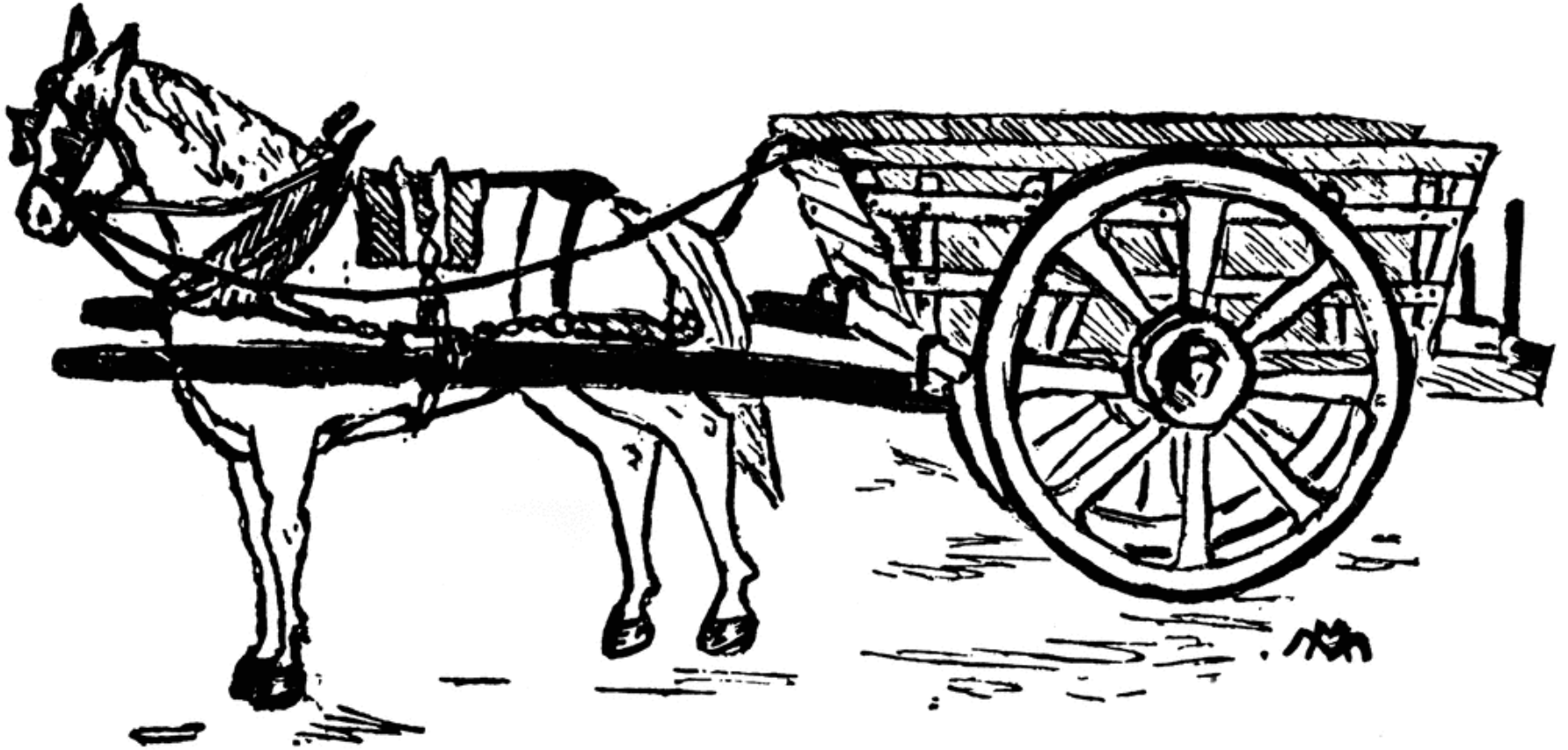
- Yes.
- Lucas's lots had been rendered valueless by the state law. "[W]hen the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good...he has suffered a taking."
- Established the modern "total takings" test.
- Lucas was paid \$850,000 in compensation for the two lots.

Zoning in the Modern Era (1970-present)

- **Land use conflicts continued through the 1980s and 1990s**
- **Stars aligned in the late 1990s when a series of study groups and task forces convened on land use and planning issues**
- **In 1999, WI adopted their comprehensive planning law**

Comp plan (goals)

Zoning (way to achieve goals)



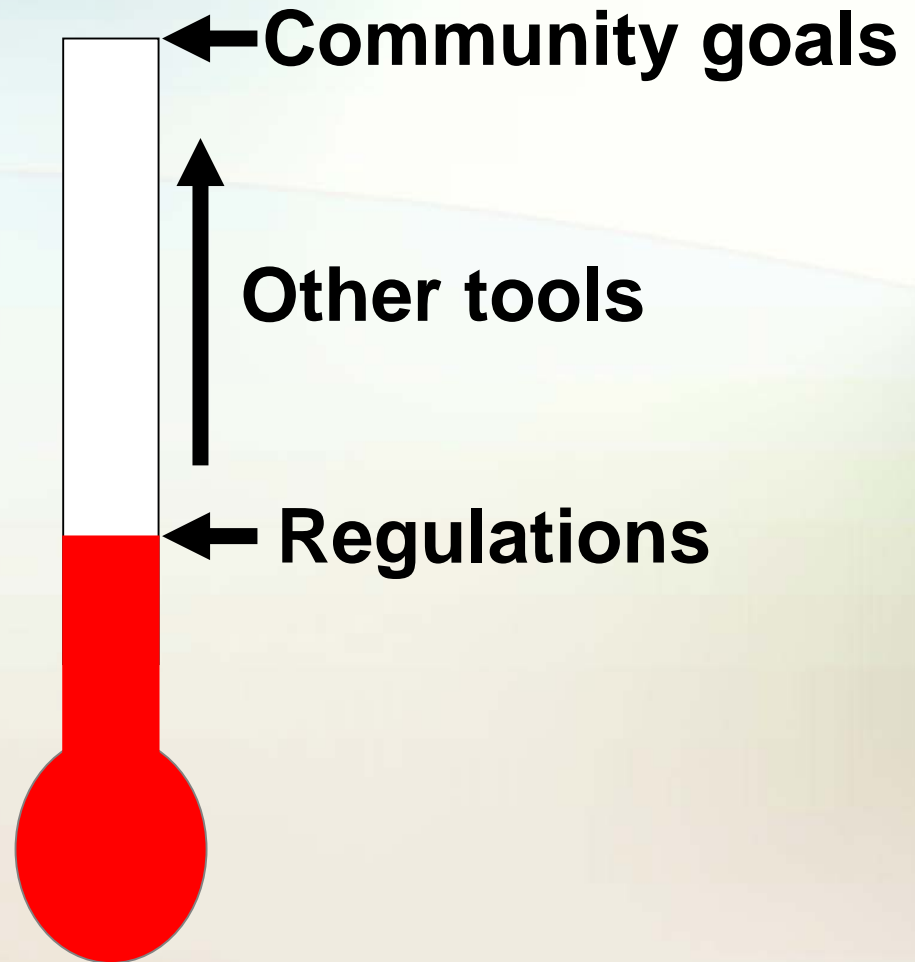
Zoning's Relation to Comprehensive Plans

Beginning on January 1, 2010, if a local governmental unit engages in any of the following actions, those actions shall be consistent with that local governmental unit's comprehensive plan:

- **Official mapping**
- **Local subdivision regulation**
- **General zoning ordinances**
- **Shoreland zoning**

Regulations provide minimum standards

Other tools are needed to achieve optimum performance



Tools to implement community plans

- **Capital investment** - roads, utilities, etc.
- **Regulation** - subdivision regs, zoning, etc.
- **Focus/classification** – “selective sacrifice”
- **Incentives** – tax breaks, density bonus, cost sharing, technical assistance
- **Education** - standards and preferred practices
- **Easements/land trusts**

They work best in combination

Nearly 4.4 miles of natural shoreline along Katherine Lake in Oneida County was included in the Yawkey Lumber Co.'s donation of 430 acres of forest and wetlands to the Northwoods Land Trust. 11/28/18
(Photo: Northwoods Land Trust)



Shoreland Zoning Resources

Overview of Shoreland Zoning



A video explaining basics, county efforts, and the 2015-16 changes to shoreland zoning. www.youtube.com/watch?v=enus9Ceub2g

Public Trust Doctrine



Three short videos about the Wisconsin citizens who have helped develop the Public Trust Doctrine. This is the legal basis and the rationale behind shoreland zoning and goes back to the Wisconsin Constitution. dnr.wi.gov/topic/waterways/about_us/doctrine.htm

Summary of shoreland zoning, includes suggestions for zoning board members. Chapter 21 of Zoning Board Handbook.

www.uwsp.edu/cnr-ap/clue/Documents/ZoningHandbook/Zoning_Board_Handbook.pdf

Publications for waterfront property owners

www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/water.aspx

- Does shoreland zoning work?
- Protecting your waterfront investment: 10 simple steps
- Impervious surfaces, How they impact fish, wildlife and waterfront property values
- Choosing the right waterfront property
- Kids' books: Magic Goggles and Fish Hotel

Videos you might play for the public in your zoning office

Larry the All-American Bullfrog (one minute video about sharing your shore with frogs)

<https://www.youtube.com/watch?v=fABgIKV6MLc>

Sebastian the Goose Encourages Natural Shorelines (geese poop a lot and often - two minutes)

<https://www.youtube.com/watch?v=uhKIGxXgrLg>

Impacts of impervious surfaces on fish, wildlife and waterfront property values (12 minutes)

<https://www.youtube.com/watch?v=UPjPnaGNB1c&feature=youtu.be>

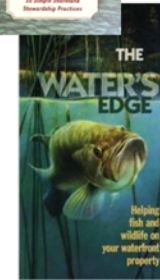
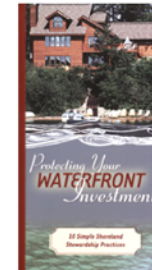
Fish Hotel kids' book reading (benefits of leaving fallen trees in the water)

<https://www.youtube.com/watch?v=TjNYsRFmvlc&feature=youtu.be>

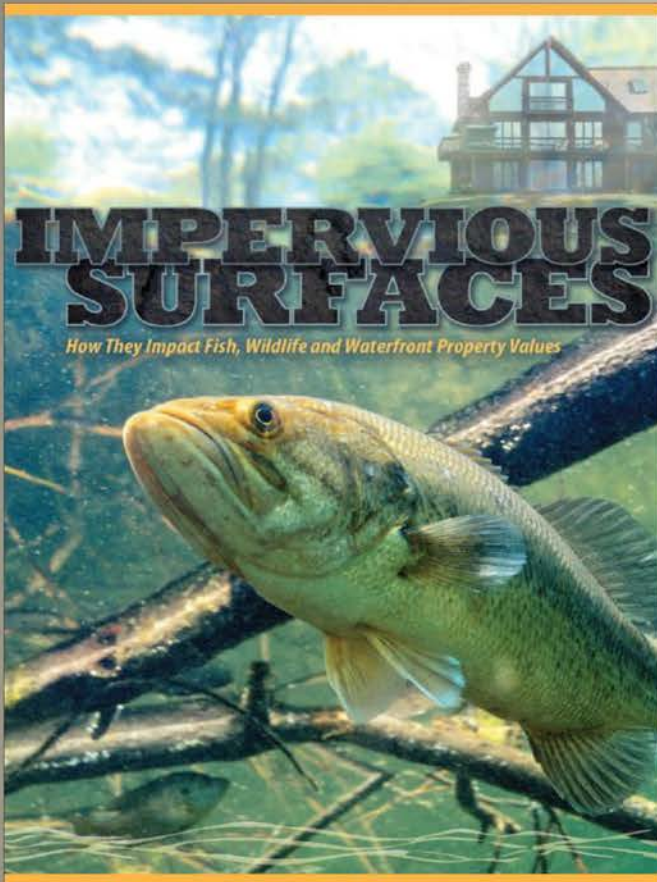
Magic Goggles kids' book reading (benefits of trees along the shoreline)

<https://www.youtube.com/watch?v=FsoUfubOjAU&feature=youtu.be>

9 longer videos about better living on our lakes and rivers <https://extension.umn.edu/water-resources/shoreland-property-owners#videos%3A-better-living-on-our-lakes-and-rivers-673066>



I will send out an email request next week for zoning offices to order free pubs to be delivered at the Spring WCCA conference



- More impervious (hard) surfaces and more runoff lead to fewer fish because:
- **More runoff** reduces water soaking into the ground, which leads to warmer water temperatures during dry periods and lower stream flows
 - **More runoff** from hot pavement and shingles makes the water hotter which can kill species like northern pike and trout
 - **More nutrients** result in less oxygen in the water, which fish need to survive
 - **More sediments** and algae growth make it difficult for some predator species that hunt by sight to find their food
 - **More sediments** cover spawning beds of fish such as smallmouth bass, walleye, and crappie, potentially inhibiting reproduction.



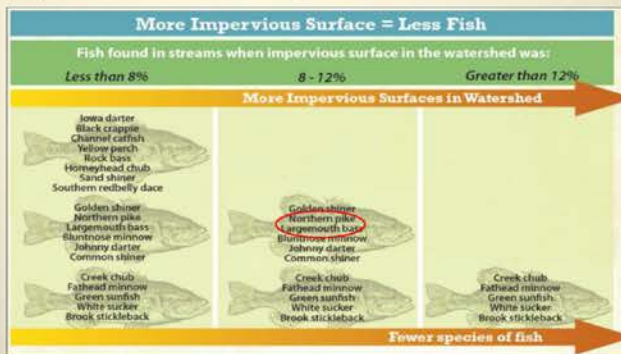
Healthy lakes and streams are truly the basis for creating fond memories of time spent near the water.

Healthy fish, abundant wildlife, and clear, clean water all depend on the individual decisions that we make about our waterfront properties.

3 REASONS TO MINIMIZE IMPERVIOUS SURFACES

1. FISHING

Runoff from impervious surfaces like rooftops, driveways, parking areas, roads and patios leads to fewer fish and fish species.



When impervious surfaces covered 8-12% of a watershed – the land that drains to the stream – the number of fish species was reduced, based on a study of warmwater streams in Wisconsin.

When impervious surfaces were over 12%, the overall number of fish species plummeted, and northern pike and largemouth bass were lost.

When impervious surfaces covered more than 11% of a watershed, trout were eliminated from coldwater streams.

The same trend was found in Wisconsin lakes: more impervious surfaces in the watershed resulted in fewer fish species.

2. WILDLIFE

The creation of impervious surfaces removes essential habitat for numerous species. Driveways, cemented paths and other impervious surfaces can be thought of as biological deserts where animals cannot find food or shelter.



Photo by Michelle Woodford

Loons can be impacted by runoff from impervious surfaces that turns clear water murky. Loons search for fish from the water's surface, making clear water key to finding food. Loon pairs appear to favor lakes with clearer water.

3. WATERFRONT PROPERTY VALUES

A recent study of over 1,000 waterfront property sales in Minnesota found that when all other factors remained equal, properties on lakes with clearer water commanded significantly higher property prices.

When waterfront property values decrease, the options are to increase mill rates, shift the tax burden to other properties, or reduce local government services.



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Walleye typically spawn between mid-April and early May when spring runoff is highest. If sediments cover spawning grounds, walleye eggs can die quickly due to inadequate water flow and oxygen deprivation.

**WHEN YOU'RE FERTILIZING THE LAWN,
REMEMBER YOU'RE NOT JUST
FERTILIZING THE LAWN.**



You fertilize the lawn. Then it rains. The rain washes the fertilizer along the curb, into the storm drain, and directly into our lakes and streams. This causes algae to grow, which uses up oxygen that fish need to survive. So if you fertilize, please follow directions and use sparingly.

Questions???

