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**PUBLIC SAFETY & WELFARE COMMITTEE
VILLAGE OF SUSSEX
7:00 P.M. TUESDAY, DECEMBER 5, 2023
SUSSEX CIVIC CENTER – COMMITTEE ROOM 2nd FLOOR
N64W23760 MAIN STREET**

Pursuant to the requirements of Section 19.84, Wis. Stats., notice is hereby given of a meeting of a Village Committee, at which a quorum of the Village Board may attend in order to gather information about a subject which they have decision making responsibility. The meeting will be held at the above noted date, time and location. Notice of Village Board Quorum, (Chairperson to announce the following if a quorum of the Village Board is in attendance at the meeting: Please let the minutes reflect that a quorum of the Village Board is present and that the Village Board members may be making comments under the Public Comments section of the agenda, during any Public Hearing(s) or if the rules are suspended to allow them to do so.)

1. Roll call
2. Consideration and possible action on minutes from meeting of November 21, 2023.
3. Discussion and possible action on Designated Offender Petition.
4. Sex Offender Residency Board Training
5. Adjournment.

Stacey Riedel
Chairperson

Jeremy Smith
Village Administrator

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact Jeremy Smith at 246-5200.

VILLAGE OF SUSSEX
SUSSEX, WISCONSIN

Minutes of the Public Safety and Welfare Committee of
November 21, 2023

1. Roll Call:

The meeting was called to order at 6:00 p.m. at the Civic Center.

Members present: Ron Wells, Ben Jarvis, Stacy Riedel, Kasey Fluet

Members absent: None

Also present: Fire Chief Kris Grod, Police Captain Lisa Panas, Administrator Jeremy Smith

2. Consideration and possible action on minutes:

A motion by Jarvis, seconded by Wells to approve the February 21, 2023 minutes as presented.

Motion carried 4-0

3. Police Items:

A. Police Chief's Report

Captain Panas summarized the report included in the meeting packet.

B. 2024-2028 Sheriff's Contract

A motion by Reidel, seconded by Jarvis to approve the 2024-2028 Sheriff's Contract.

Motion carried 4-0

C. Resolution 23-30

A motion by Reidel, seconded by Wells to approve Resolution 23-30.

Motion carried 4-0

D. Flock Camera Usage Report

Captain Panas summarized the report included in the meeting packet.

4. Fire Items:

A. Fire Chief's Report

Chief Grod summarized the report included in the meeting packet.

B. 9-11 Joint Powers Agreement

A motion by Reidel, seconded by Jarvis to approve the 9-11 Joint Powers Agreement.

Motion carried 4-0

5. Resolution 23-31:

A motion by Reidel, seconded by Wells to approve Resolution 23-31 approving the Municipal Court Budget.

Motion carried 4-0

6. Adjournment

A motion by Reidel, seconded by Wells to adjourn the meeting at 6:18p.m.

Motion carried 4-0

Respectfully submitted,
Jeremy Smith
Village Administrator

SEXUAL OFFENSE(S)

Sexual Offense #1

Offense Degree: <input type="checkbox"/> First <input type="checkbox"/> Second <input type="checkbox"/> Third	Conviction Date: ___/___/___
Offense: _____	Sentence: _____
Offense Date: ___/___/___ Victim's Age ___	Time Served: ___ Years ___ Months

Are you currently under supervision by the Department of Corrections for this offense? Yes No

Sexual Offense #2

Offense Degree: <input type="checkbox"/> First <input type="checkbox"/> Second <input type="checkbox"/> Third	Conviction Date: ___/___/___
Offense: _____	Sentence: _____
Offense Date: ___/___/___ Victim's Age ___	Time Served: ___ Years ___ Months

Are you currently under supervision by the Department of Corrections for this offense? Yes No

Check here if you have been convicted of three (3) or more sexual offenses and attach extra sheets listing the information above regarding those offenses.

Please Note: Your petition will not be heard until you provide copies of criminal complaint(s); judgment(s) of conviction; and police report(s) for each offense as indicated above.

CRIMINAL HISTORY

Are you currently incarcerated? Yes No If yes, when is your expected release date: ___/___/___

List ALL prior criminal convictions below, including date and location (city and state where offense occurred) of each offense. Do not include Juvenile Offenses. Attach extra sheets if needed:

1) _____	_____	_____
Offense	Year	Location (City and State)
2) _____	_____	_____
Offense	Year	Location (City and State)
3) _____	_____	_____
Offense	Year	Location (City and State)
4) _____	_____	_____
Offense	Year	Location (City and State)

COMPLETED TREATMENT PROGRAMS

This confidential part of your petition will only be available to the Residency Board and not be available to the public.

List the names of any treatment programs you have completed and attach documentation confirming that you have completed the treatment program.

- | | |
|--|--|
| <input type="checkbox"/> Sex Offender: _____ | <input type="checkbox"/> Document Attached |
| <input type="checkbox"/> Anger: _____ | <input type="checkbox"/> Document Attached |
| <input type="checkbox"/> Alcohol: _____ | <input type="checkbox"/> Document Attached |
| <input type="checkbox"/> Drugs: _____ | <input type="checkbox"/> Document Attached |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Document Attached |

Please Note: It is your obligation to provide a document that proves that you have completed a treatment program to have it considered.

COMMUNITY TIES AND SUPPORT

Have you previously lived in the Village of Sussex? Yes No

If "Yes," list all years of residency? _____

Identify by name each person or group that will support you if you move to Sussex:

NETWORK	NAME(S) AND CONTACT INFORMATION OF, AND RELATIONSHIP TO, SUPPORTING PERSON(S) / GROUPS
---------	--

- | | |
|----------------------------------|----------------|
| <input type="checkbox"/> Family | _____
_____ |
| <input type="checkbox"/> Work | _____
_____ |
| <input type="checkbox"/> Church | _____
_____ |
| <input type="checkbox"/> Friends | _____
_____ |
| <input type="checkbox"/> Other | _____
_____ |

PETITIONER'S SIGNATURE

By signing below, I hereby certify that all statements made in this Petition are **TRUE AND COMPLETE** I understand that any omissions of untruthful statements will be **GOODS FOR DENIAL** of my Petition. Furthermore, I authorize the Village of Sussex to conduct a Criminal Background Check and use any information obtained therefrom at my hearing.

I Hold Harmless and Indemnify the Village of Sussex, its officers, agents, and employees, and any persons providing the information, from any liability related to performing the Background Check.

Petitioner's Signature _____ Date: _____

Witness: _____

Print Witness Name: _____

SUBMIT COMPLETE PETITION AND REQUIRED DOCUMENTS TO:

Sussex Village Clerk

N63W24335 Main Street

Sussex, WI 53089

You will be notified of the date and time of your Hearing before the Sussex Sex Offender Residency Board, which may be 30-45 days after receipt of your Petition. You must notify us of any mailing address change(s) during the Petition process.

For Office Use Only:	
Petition Received Date:	Petition Received By (Initials)
Date Notice of Hearing Mailed to Petitioner:	

Municipal LAW

& L I T I G A T I O N G R O U P

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MICHAEL J. MORSE
JAMES P. WALSH

Village of Sussex

Sex Offender Residence Appeal Manual

Prepared by Attorney John P. Macy
Municipal Law & Litigation Group, S.C.
December 1, 2023

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Note: The issues described in this outline are based upon State laws, Village of Sussex ordinances and other legal sources. Such laws are often modified from time to time. As issues arise, it will be important to ensure that this outline continues to describe the laws then in effect. The applicable laws will apply and will control.

SECTION 1: Introduction.

This manual is intended to serve as a guide to the members of the Village of Sussex Sex Offender Residency Board (“Residency Board”) to describe their general roles and responsibilities. In general, the Residency Board will have the obligation of administering the Designated Offender Petition Process described in Section 9.09(21)(H) of the Village of Sussex Village Code. The members of the Residency Board shall make a determination, by majority vote of the members, to grant or deny the exemptions sought, and impose terms as fitting and allowed for by the Village Code based upon evidence presented, applying the standards of the Ordinance to the facts received at the hearing. This manual should not be interpreted as modifying any standard shown in the Village Ordinance or in applicable laws, but is only intended to serve as a guide and further research may be required as issues are presented case by case.

SECTION 2: Role of the Sex Offender Residency Board.

The Village Ordinance describes the role of the Residency Board in hearing and administering the Designated Offender Petition Process described in Section 9.09(21)(H) of the Village of Sussex Village Code regarding “Sex Offender Residency Restrictions; Child Safety Zones.” A copy of the Ordinance is attached as Exhibit A. Particular duties include the following:

- A. Approval of an official petition form which shall be available on the Village’s website and in the office of the Village Clerk.
- B. The Residency Board shall hold a hearing the petition without unreasonable delay, which is also open to the public.
- C. The Residency Board may review any pertinent information and accept oral and written statements from any person at the public hearing and base its decisions on factors related to the Village’s interest in promoting, protecting, and improving the health, safety, and welfare of the community as asset forth in Village Code Chapter 9, while giving due consideration to other applicable factors. The other applicable factors shall include, but are not limited to:
 1. Nature of the offense that resulted in the Designated Offender’s status;
 2. Date of the offense;
 3. Age at the time of the offense;
 4. Recommendation of probation or parole officer;
 5. Recommendation of the police department;
 6. Recommendation of any treating practitioner;
 7. Counseling, treatment, and rehabilitation status of the Designated Offender;
 8. Remorse of the Designated Offender;
 9. Duration of time since Designated Offender’s incarceration;
 10. Support network of Designated Offender
 11. Relationship of Designated Offender and victim(s);
 12. Presence or use of force in offense(s);
 13. Adherence to terms of probation or parole;

Village of Sussex
Sex Offender Residence Appeal Manual
Prepared by Attorney John P. Macy, Municipal Law & Litigation Group, S.C.

14. Proposals for safety assurances of Designated Offender;
 15. Location of Domicile in relation to Child Safety Zone and Child Safety Zone locations with respect to the nature of the offense'
 16. Conditions to be placed on any exception from the requirements of this Ordinance.
- D. The Residency Board shall then decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or limited to a certain address, or time, or subject to other reasonable conditions.
- E. A written copy of the Residency Board's decision shall be provided to the Designated Offender, the Village Administrator, and the Lieutenant commanding the Village's law enforcement.

SECTION 3: Quasi-Judicial Capacity: Ethical Considerations.

The members of this Residency Board and Village Board (collectively "Reviewer(s)") serve as judges, not as legislators. The decisions are not based on policy, but based upon facts presented and standards applied. Service in this quasi-judicial capacity requires all of the following:

- A. The Reviewers must be impartial.
- B. If a Reviewer is not impartial, or cannot be fair to both sides, or has expressed opinions publicly in favor of one side in the issue, the member should recuse himself or herself.
- C. Reviewers should not participate in communication with others outside of the public hearing process. Like a court procedure, the information that informs the decision-making should all be received at the hearing, so that all parties have an opportunity to respond to the relevant information.
- D. There must be an opportunity for the interested parties to be heard.

Attached as Exhibit B is an outline with further explanation of this quasi-judicial role, which comes from a Zoning Board Handbook (2nd Edition, Marcum and Roberts, 2006). While that document was prepared for Zoning Boards, it applies equally to the Reviewers, because both serve in a quasi-judicial capacity.

Failure to follow these ethical and procedural guidelines would subject the municipality to potential claims, and would subject the decisions made in the matter to possibly being overturned on appeal. Attached as Exhibit C is a landmark case on this issue of bias of decision makers entitled, *Marris v. City of Cedarburg*. In that case one of the decision makers made certain statements reflecting bias ("Let's get her [Marris] on the Leona Helmsley rule"), which the Court found to violate the Applicant's rights to due process and fair play in the proceeding. The Court overturned the decision of the Board in that case. Another case attached as Exhibit D, is *Keen v. Dane County Board of Supervisors*, in which the Court of Appeals overturned the decision of the Zoning Board due to what it found to be an impermissibly high risk of bias of the decision makers. The

Village of Sussex
Sex Offender Residence Appeal Manual
Prepared by Attorney John P. Macy, Municipal Law & Litigation Group, S.C.

Court found that one of the members of the Zoning Board had submitted a letter in favor of the Applicant prior to the decision being made, which it found created an impermissibly high risk of bias requiring reversal of the decision. These cases underscore that when you act in a quasi-judicial role, you must not only maintain neutrality on the issues before the case is heard, you must be careful in statements you make orally and in writing prior to the hearing to ensure that you do not say something that reflects bias one way or the other in the matter.

SECTION 4: Draft Documentation.

I am enclosing numerous documents that outline recommended procedures, recommended notice forms, recommended findings templates and the like, which may be used to facilitate your procedures. The attachments include the following:

- A. Sex Offender Appeal Form (Exhibit E).
- B. Clerk's Process Outline (Exhibit F).
- C. Sample Agenda (Exhibit G).
- D. Sample Findings (Decision) Form (Exhibit H).
- E. Sample Notice of Hearing (Exhibit I).
- F. Sample Letter to Applicant (Exhibit J).
- G. Affidavit of Posting (Exhibit K).
- H. Affidavit of Mailing (Exhibit L).

Municipal LAW

& LITIGATION GROUP

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JAMES P. WALSH

December 1, 2023

Jeremy Smith, Village Administrator
Village of Sussex
N64W23760 Main Street
Sussex, WI 53089

**Re: Sex Offender Residency Board
Training Packet for Residency Appeals**

Dear Mr. Smith:

I received your direction to prepare a training packet for the Sex Offender Residency Board to assist them in the appeals process. I have had an opportunity to carefully consider this matter.

Enclosed please find a training packet that I prepared for your consideration. I note the following comments, questions, concerns and recommendations in this regard.

1. Section 9.09(21) "Sexual Offender Residency Restrictions; Child Safety Zones" of the Village Code. The process of seeking an exemption to the Village's Sex Offender Residency Restrictions is described in Section 9.09(21)(H) of the Village Code as follows:
 - a. A designated offender may seek an exemption from the Village's sex offender residence requirements by submitting an official petition form to the Village Clerk.
 - b. While there is no required notice in the Village Code, we recommend a public notice similar to Exhibit I be published by the Village Clerk, as the Village would for other public hearings. One policy consideration for the Village is whether the notice should be provided to any individuals other than the Sex Offender Residency Board and the petitioner. Some municipalities choose to inform neighbors of the hearing, while others do not specifically inform these other individuals. As noted, this is entirely a policy decision, but is one that the Village should closely consider.

MUNICIPAL LAW & LITIGATION GROUP, S.C.

Jeremy Smith
December 1, 2023
Page 2

- c. The Residence Board shall then hold a hearing on the petition, in which the Board may review any pertinent information, and accept oral or written statements by any person.
- d. The Residence Board must base its decision on factors related to the Village's interest in promoting, protecting, and improving the health, safety, and welfare of the community.
- e. Additional factors the Residence Board shall consider are listed in Section 9.09(21)(H)e. of the Village Code:
 - i. Nature of the offense that resulted in sex offender status.
 - ii. Date of offense.
 - iii. Age at time of offense.
 - iv. Recommendation of probation or parole officer.
 - v. Recommendation of Police Department.
 - vi. Recommendation of any treating practitioner.
 - vii. Counseling, treatment and rehabilitation status of Designated Offender.
 - viii. Remorse of Designated Offender.
 - ix. Duration of time since Designated Offender's incarceration.
 - x. Support network of sex offender.
 - xi. Relationship of Designated Offender and victim(s).
 - xii. Presence or use of force in offense(s).
 - xiii. Adherence to terms of probation or parole.
 - xiv. Proposals for safety assurances of Designated Offender.
 - xv. Location of Domicile in relation to Child Safety Zone and Child Safety Zone Locations with respect to nature of the offense.
 - xvi. Conditions to be placed on any exception from the requirements of this article.
- f. The Residence Board shall make its decision by a majority vote. An exemption may be unconditional, or limited to a certain address or time, or subject to other reasonable conditions.
- g. A written copy of the decision must be provided to the petitioner.

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2. Appeals – Village Code Chapter 24. Village Code Section 9.09(21)(H)g. allows for the Residency Board’s petition decision to be appealed within 30 days of receipt of the Residency Board’s decision under Chapter 24 of the Village Code.
 - a. Village Code Section 24.02 addresses the reviewable determinations under Chapter 24, providing examples in list form. However, appeals of the Residency Board decisions are not explicitly provided for therein. Village Code Section 24.02(1) provides that a determination of the “grant or denial in whole or in part, after application, of an initial permit, license, right, privilege or authority, except a fermented malt beverage or intoxicating liquor license” may be reviewed.

Village Code Section 9.09(21) characterizes the petition process as petitioning for an exemption to the general provisions of the Village Code, and exemptions are not specifically mentioned as subject to review under Chapter 24. The exemption could be characterized as a “right” or “privilege,” and the decision of a petition could be reviewable as such under Section 24.02(1).
3. Exhibits. Attached to this letter you will find the training manual I have prepared. The Manual consists of a 5 page outline, plus cover page; plus numerous exhibits that re referenced in that outline. I will be happy to have this material presented to the Sex Offender Residency Board members at the upcoming training.

If you should have any questions or concerns regarding this matter, please do not hesitate to contact me.

Yours very truly,
MUNICIPAL LAW & LITIGATION GROUP, S.C.

John P. Macy

John P. Macy

JPM/LCL/em
Enclosures
cc: Jennifer Moore, Village Clerk/Treasurer

(E) Unlawful Assemblies. No persons shall through the unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk cause large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.

(18) DISTRIBUTION OF HANDBILLS PROHIBITED. No person within the Village shall distribute or place or cause to be distributed or placed on any premises any handbill or any printed or advertising matter unless permitted by the occupant of the premises. Political and religious matters are specifically exempt from this requirement.

(19) OPEN CISTERNS, WELLS, BASEMENTS OR OTHER DANGEROUS EXCAVATIONS PROHIBITED. No person shall have or permit on any premises owned or occupied by him any open cisterns, cesspools, wells, unused basements, pits, or excavations or other dangerous openings. All such places shall be filled, securely covered or fastened, in such manner as to prevent injury to any person and any cover shall be of a design, size and weight that the same cannot be removed by small children..

(20) ABANDONED OR UNATTENDED REFRIGERATORS, FREEZERS, ETC., PROHIBITED. No person shall leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under his control in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator, freezer or other container which has an airtight door or lid, snap lock, or other locking device which may not be released from the inside without first removing such door or lid, snap lock or other locking device from such ice box, refrigerator, freezer or container unless such container is displayed for sale on the premises of the owner or his agent and is securely locked or fastened.

(21) SEXUAL OFFENDER RESIDENCY RESTRICTIONS; CHILD SAFETY ZONES.

(A) Findings, Purpose & Intent.

1. Findings. The Village Board of the Village of Sussex, Waukesha County, Wisconsin, hereby finds as follows and adopts such findings as its legislative history for the provisions hereinafter enacted:
 - (a) The Wisconsin Statutes provide for the punishment, treatment and supervision of persons convicted or otherwise responsible for sex crimes against children, including their release into the community.
 - (b) Chapter 980, Wis. Stats., provides for the civil commitment of sexually violent persons, a more dangerous type of sex offender, and specifically, in § 980.08, Wis. Stats., following such commitment, under certain conditions, provides for the supervised release of such persons into the community.
 - (c) The Village of Sussex places a high priority on maintaining public safety through highly skilled and trained law enforcement as well as dependency upon laws that deter and punish criminal behavior.
 - (d) Sex offenders have very high recidivism rates, and according to a 1998 report by the United States Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend and prey on the most innocent members of our society. In addition, more than 2/3 of the victims of rape and sexual assault are under the age of 18, and sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.
 - (e) The Village Board has been advised by staff counsel of the findings of a number of the legislatures of these United States, including Wisconsin, and

including but not limited to Pennsylvania, Alabama, Iowa, Florida, Maine, and Louisiana, as they pertain to laws adopted which relate to and in part impose restrictions upon sex offenders with respect to residency.

- (f) The Village Board has also been advised of the decision of the United States Court of Appeals for the 8th Circuit, in *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005), providing in part: "The record does not support a conclusion that the Iowa General Assembly and the Governor acted based merely on negative attitudes toward, fear of, or a bare desire to harm a politically unpopular group [citation omitted]. Sex offenders have a high rate of recidivism, and the parties presented expert testimony that reducing opportunity and temptation is important to minimizing the risk of re-offense. Even experts in the field could not predict with confidence whether a particular sex offender will reoffend, whether an offender convicted of an offense against a teenager will be among those who 'cross over' to offend against a younger child, or the degree to which regular proximity to a place where children are located enhances the risk of re-offense against children. One expert in the district court opined that it is just 'common sense' that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense [citation omitted]. The policymakers of Iowa are entitled to employ such 'common sense,' and we are not persuaded that the means selected to pursue the State's legitimate interest are without rational basis."
 - (g) The Village Board having considered a proposed amendment to this Code to provide residency restrictions for sex offenders and child safety zones to further protect children, and upon all of the records and files and reports and proceedings pertaining to the subject matter, and all of the prior actions and experience of the Village of Sussex in protecting the community from sexually violent persons, finds the proposed amendments will serve to protect the health, safety and welfare of the community.
2. Section 9.09(21) is a regulatory measure aimed at protecting the health and safety of children in Sussex from the risk that convicted sex offenders may reoffend in locations close to their residences. The Village finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new sexual assault. The Village further finds that, given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, day-care centers and other places children frequent. The Village finds and declares that in addition to schools and day-care centers, children congregate or play at public parks.
 3. Code Section 9.09(21) is not intended to impose a criminal penalty or punishment of sexual offenders, but rather to serve the Village's compelling interest to promote, protect, and improve the health, safety, and welfare of children in the Village by creating areas around locations where children regularly congregate in concentrated numbers where sexual offenders and sexual predators are prohibited from loitering and/or establishing temporary or permanent residence and by regulating certain activities that may be used by sexual offenders to prey upon children.

4. Repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present a particular threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims that are never reported, and are prosecuted for only a fraction of their offenses. This makes the cost of sexual offender victimization to society at large while incalculable, clearly exorbitant.

(B) Definitions. As used in code section 9.09. and unless the context otherwise requires:

1. Child is a person under the age of 16.
2. Children is two or more persons under the age of 16.
3. Child Safety Location is the site upon which any of the following are located without regard to whether such site is located within the geographic limits of the Village of Sussex:
 - (a) Facility for Children
 - (b) Group home, as defined in Wis. Stat. sec. 48.02(7)
 - (c) Library, that is held open for use by the public
 - (d) Licensed day care center as defined in Wis. Stat. sec. 48.65
 - (e) Public or private primary, elementary, secondary, middle, junior high, or high school
 - (f) Recreational trail, playground, athletic fields used by children, or park
 - (g) Specialized school for children, including, without limitation, a gymnastics academy, dance academy, or music school
 - (h) Swimming pool, wading pool, splash pad, or aquatic facility held open for use by the public
 - (i) A public or private golf course or range
4. Child Safety Zone is any place within the municipality that is physically located within one thousand feet (1,000') of any Child Safety Location.
5. Designated Offender is any person who is required to register under § 301.45, Wis. Stats., for any sexual offense against a child, or any person who is required to register under § 301.45, Wis. Stats., and who has been designated a special bulletin (SBX) sex offender pursuant to §§ 301.46(2) and (2m), Wis. Stats.
6. Domicile is an individual fixed and permanent home where the individual intends to remain permanently and indefinitely and to which whenever absent the individual intends to return provided, however, that no individual may have more than one domicile at any time. Domicile does not include a residence for any special or temporary purpose.
7. Facility for children is a public or private school, a group home, as defined in Section 48.02(7), Wisconsin Statutes, a residential care center for children and youth, as defined in Section 48.02(15d), Wisconsin Statutes, a shelter care facility, as defined in Section 48.02(17), Wisconsin Statutes, a day care center licensed under Section 48.65, Wisconsin Statutes, a day care program established under Section 120.13(14), Wisconsin Statutes, a day care provider certified under Section 48.651, Wisconsin Statutes, or a youth center, as defined in Section 961.01(22), Wisconsin Statutes.
8. Minor is a person under the age of 18.

9. Permanent Residence means a place where a Designated Offender sleeps abides lodges or resides for 14 or more consecutive days.
10. Temporary Residence means a place where a Designated Offender abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the Designated Offender's permanent address or a place where the Designated Offender routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the Designated Offender domicile.

(C) Residency Restrictions For Designated Offenders, Exceptions.

1. Child Safety Zone Restriction. Subject to the exceptions in Section (C)2, no Designated Offender shall establish a permanent or a temporary residence within the Village that is within a Child Safety Zone, as determined by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of any Child Safety Location.
2. Exceptions. A Designated Offender may not be found in violation of the residency restrictions in Section (C)1 if the Designated Offender established that any of the following apply:
 - a. The Designated Offender established the Permanent Residence or Temporary Residence in the Village prior to October 25, 2011 provided, however, that if the person was then subject to Wis. Stat. Sec. 301.45, the person must have also reported and registered such residence pursuant to Wis. Stat. Sec. 301.45 prior to such date to take advantage of the exception.
 - b. The Designated Offender is a minor and is not required to register under Wis. Stats. Sec. 301.45 and Sec. 301.46.
 - c. The Child Safety Location began after the Designated Offender had established the Permanent Residence or Temporary Residence and reported and registered such residence if required pursuant to Wis. Stat. Sec. 301.45.
 - d. The Designated Offender is subject to an active court order to serve a sentence or is otherwise involuntarily required to reside in a jail, prison, juvenile facility, or other correctional institution or mental facility within the Child Safety Zone.
 - e. To the extent required by § 980.135 of the Wisconsin Statutes, and notwithstanding the foregoing provisions of this Ordinance, the Designated Offender has been released under Wis. Stat. § 980.08, so long as the Designated is subject to supervised release under Chapter 980 of the Wisconsin Statutes, is residing where he or she is ordered to reside under Wis. Stat. § 980.08, and is in compliance with all court orders issued under Chapter 980 of the Wisconsin Statutes.
 - f. The residence is also the primary residence of the Designated Offender's parent(s), grandparent(s), sibling(s), spouse, child or children and such parent(s), grandparent(s), sibling, spouse, child or children established their residence at least two years before the Designated Offender established residence at that location. The Designated Offender, however, shall be prohibited from residing in such location if a victim of an offense giving rise to the Designated Offender's designation also

resides at the residence and is a Minor unless the Designated Offender is on probation or parole and residing with the victim is approved in writing by the probation or parole officer; and if not on probation or parole, such location is prohibited unless approved in writing by the Lieutenant commanding the Village's law enforcement officers, based upon a finding that the circumstances of the offense, the Designated Offender, the victim, and all relevant information in the matter substantially eliminates the risk of re-offense against the victim.

- g. The Sex Offender is granted an exemption through the Sexual Offender Petition Process.

(D) Renting Real Property To Designated Offenders, Restricted. No person shall let or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that it will be used as a permanent or temporary residence by a Designated Offender contrary to the provisions of Section (C) above.

(E) Prohibited Activities by Designated Offenders, Exception.

1. Prohibited Activities by Designated Offenders, Except as provided in subsection (E)2, no Designated Offender shall participate in a holiday event in the Village involving a child or children by means of distributing candy or other items to such child or children in relationship to Halloween, wearing a Santa Claus costume in a public place in relationship to Christmas, or wearing an Easter Bunny costume in a public place in relationship to Easter, or other similar activities that may, under the circumstances then present, tend to entice a child to have contact with a sex offender.
2. Exception. Events in which the Designated Offender is a parent or legal guardian of the child or children involved are exempt from the provisions of Section (E)1 above provided that no child or children other than a child or children of the Designated Offender are present at the event or if the Designated Offender is granted an exemption through the Sexual Offender Petition Process

(F) Loitering by Designated Offender, Prohibited, Exception.

1. Loitering by Designated Offender. No Designated Offender shall loiter or prowl on or within two hundred feet (200') of any Child Safety Location, at a time, or a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of the persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself of any object. Unless flight by the actor or other circumstances makes it impractical, a law enforcement officer shall prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself or explain his or her presence and conduct at the aforementioned locations. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and, if believed by the law enforcement officer at the time, would have dispelled the alarm.
2. Exception. The prohibitions set forth in section 6(a) above shall not apply where the Designated Offender is a minor who is with one or both of his or her parents

or guardians at the time of the offense or the actor was exercising First Amendment rights produced by the United States Constitution, including freedom of speech, free exercise of religion and the right of assembly.

A Designated Offender does not commit a violation of loitering in a Child Safety Zone as stated above and the enumerated uses may allow such person on the property supporting such use if any of the following apply:

- a. The property supporting an enumerated use under also supports a church, synagogue, mosque, temple or other house of religious worship (collectively "church"), subject to the following conditions:
 - i. The Designated Offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
 - ii. The Designated Offender shall not participate in any religious education programs which include individuals under the age of 18, unless other adults who are not offenders are also present.
- b. The property supporting an enumerated use also supports a use lawfully attended by the Designated Offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the Designated Offender as the child's parent upon the property, subject to the following conditions:
 - i. The Designated Offender's entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public; and
 - ii. Written advance notice is made from the person to an individual in charge of the use upon the property, and approval from an individual in charge of the use upon the property as designated by the owner of the use upon the property is made in return, of the attendance by the person.
- c. The property supporting an enumerated use also supports a polling location in a local, state or federal election, subject to the following conditions:
 - i. The Designated Offender is eligible to vote;
 - ii. The designated polling place for the person is an enumerated use; and
 - iii. The person enters the polling place property and proceeds to cast a ballot with whatever usual and customary assistance is provided to any member of the electorate, and the person vacates the property immediately after voting.
 - iv. The property supporting an enumerated use also supports an elementary or secondary school lawfully attended by a person who is a student, under which circumstances the person who is a student may enter upon that property supporting the school at which the person is enrolled, as is reasonably required for the educational purposes of the school.

- d. The property also supports a court, government office or room for public governmental meetings, subject to all of the following conditions:
 - 1. The Designated Offender is on the property only to transact business at the government office or place of business, other than a public library, or to attend an official meeting of a governmental body; and
 - 2. The Designated Offender leaves the property immediately upon completion of the business or meeting.
- e. The Sexual Offender is granted an exemption through the Sexual Offender Appeal process.

(G) Child Safety Zone Map. The Village Clerk's Office shall maintain an official map showing Child Safety Zones within the Village. The Village Clerks' Office shall update the map at least annually to reflect any changes in the location of Child Safety Zones. The map is to be displayed in the office of the Village Clerk. In the event of a conflict, the terms of this Ordinance shall control. In no event shall a failure to update the map in compliance with this Ordinance preclude the prosecution or conviction of any Designated Offender under this Ordinance.

(H) Designated Offender Petition Process, Residency Board established. The Village recognizes that circumstances surrounding Designated Offender status are not all the same, nor do all Designated Offenders pose the same, or in some cases possibly any, additional risk to children at large. In order to balance the rights of the public to enjoy safety in their community and protect the most vulnerable members of the community with the rights of individual citizens to enjoy their freedoms the following Petition Process may be used by a Designated Offender to seek consideration of the merits of their specific case.

- a. A Designated Offender may seek an exemption from this Ordinance by petitioning to the Sex Offender Residency Board ("Residency Board").
- b. The Residency Board shall consist of the members of the Village of Sussex Public Safety and Welfare Committee.
- c. The Residency Board shall approve an official petition form, which shall be available on the Village's website and the office of the Village Clerk.
- d. The Designated Sex Offender seeking an exemption must complete the petition and submit it to the Village Clerk who shall forward it to the Residency Board. The Residency Board shall hold a hearing on each completed petition that is submitted without unreasonable delay, Such hearing shall be open to the public.
- e. During the hearing on any petition, the petitioner shall appear in person, but may be represented by an attorney at their option. The Residency Board may review any pertinent information and accept oral or written statements from any person. The Residence Board shall base its decision on factors related to the Village's interest in promoting, protecting, and improving the health, safety and welfare of the community as set forth in this Ordinance, while giving due consideration to other applicable factors. Other applicable factors for the Residency Board's consideration shall include. but are not limited to:
 - i. Nature of the offense that resulted in Designated Offender's status
 - ii. Date of offense
 - iii. Age at lime of offense

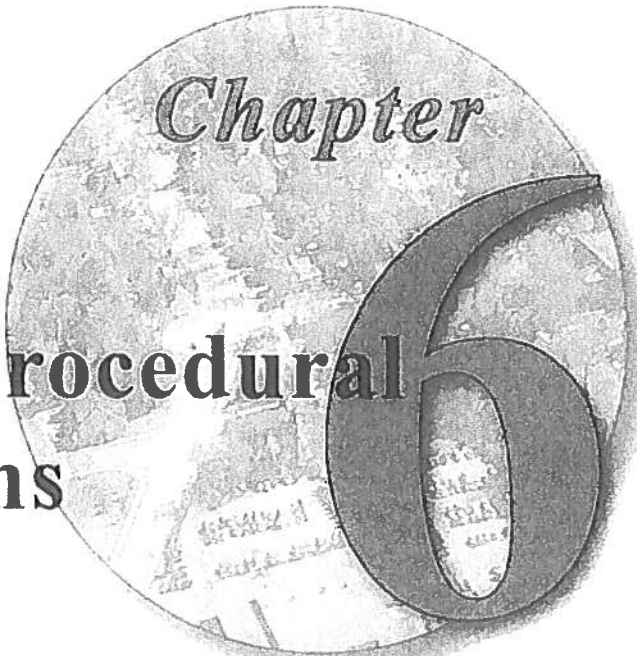
- iv. Recommendation of probation or parole officer
 - v. Recommendation of Police Department
 - vi. Recommendation of any treating practitioner
 - vii. Counseling, treatment and rehabilitation status of Designated Offender
 - viii. Remorse of Designated Offender
 - ix. Duration of time since Designated Offender's incarceration
 - x. Support network of Designated Offender
 - xi. Relationship of Designated Offender and victim(s)
 - xii. Presence or use of force in offense(s)
 - xiii. Adherence to terms of probation or parole
 - xiv. Proposals for safety assurances of Designated Offender
 - xv. Location of Domicile in relation to Child Safety Zone and Child Safety Zone locations with respect to nature of offense.
 - xvi. Conditions to be placed on any exception from the requirements of this Ordinance
- f. The Residency Board shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or limited to a certain address or time, or subject to other reasonable conditions. A written copy of the Residency Board's decision shall be provided to the Designated Offender, the Village Administrator, and the Lieutenant commanding the Village's law enforcement.
- g. The Residency Board's decision may be appealed to the Village Board under Chapter 24 of the Village Municipal Code within thirty (30) days of receipt of the Residency Board's decision. A written copy of the Village Board's decision shall be provided to the Designated Offender, the Village Administrator, and the Lieutenant commanding the Village's law enforcement.

9.10 ABATEMENT OF PUBLIC NUISANCES.

(1) **ENFORCEMENT.** The Police Department, the Fire Chief or their designated representative, the Building Inspector, the Health Officer, the Village Engineer, Public Works Director, or any other public official shall enforce those provisions of this chapter that come within the jurisdiction of their offices, and they shall make periodic inspections and inspection upon complaint to insure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and have satisfied himself that a nuisance does in fact exist.

(2) **SUMMARY ABATEMENT.** If the public official determines that a public nuisance exists within the Village and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Administrator may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(3) **ABATEMENT AFTER NOTICE.** If the public official determines that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten great and immediate danger



Ethical and Procedural Considerations

Zoning Boards Must Follow the Rules of Due Process

Due process is a basic concept of fairness in legal proceedings that has its roots in the decision making processes used by the Greeks and Romans⁶⁰ and is reiterated in the constitutions of the United States and Wisconsin.⁶¹ These constitutional provisions guarantee two distinct forms of due process: substantive and procedural. Substantive due process is concerned with the reasonableness of government action and therefore, is focused on assessing the rationality of a government decision. Procedural due process, the focus of this chapter, is concerned with the means or process employed to make the government decision in question.⁶²

Not all government actions require compliance with procedural due process principles. A rule or law that applies generally does not trigger due process guarantees.⁶³ Instead, procedural due process requirements are demanded of government only in cases

⁶⁰ Olson, Daniel M. "Procedural Due Process: The Basics Plus Town of Castle Rock." *The Municipality*. December 2005. League of Wisconsin Municipalities. pp. 416-427. Available: <http://www.lwm-info.org/legal/2005/12december/comment.html>

⁶¹ Fourteenth Amendment to the United States Constitution and Article I, Section I of the Wisconsin Constitution.

⁶² Olson, Daniel M. "Procedural Due Process: The Basics Plus Town of Castle Rock." *The Municipality*. December 2005. League of Wisconsin Municipalities. pp. 416-427. Available: <http://www.lwm-info.org/legal/2005/12december/comment.html>

⁶³ *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (U.S. 1915) cited by Olson, Daniel M. "Procedural Due Process: The Basics Plus Town of Castle Rock." *The Municipality*. December 2005. League of Wisconsin Municipalities.

Section II – Laws That Apply to the Zoning Board

where the government makes an individualized determination affecting a specific individual or specific individuals or a limited identifiable class of people.⁶⁴

Because zoning board decisions often affect specific individuals, zoning boards must follow the rules of due process to ensure that all parties involved in a hearing before the board are treated fairly.⁶⁵ Procedural rules of due process include:

- Providing adequate notice of a pending decision to affected persons,
- Ensuring that each decision maker is impartial and unbiased,
- Avoiding or disclosing any ex parte contacts,
- Providing an opportunity to present at hearings, and
- Basing decisions on clear, pre-existing standards and factual evidence in a record that is available for review.⁶⁶

Zoning Board Members Must Be Impartial

Wisconsin case law requires that zoning board members be impartial, that is, free of bias and conflicts of interest. Zoning decisions are particularly vulnerable to concerns about impartiality because decision-makers are local residents with numerous social and economic ties to their communities. However, it is important to point out that as a zoning board member your opinions about specific local regulations or zoning in general do not necessarily disqualify you from making decisions.⁶⁷ A personal opinion or stance, such as pro-growth or anti-growth, should not influence your decision. Bias related to applicants' ethnicity, gender, or religion is also inappropriate. Reviewing your voting record to determine whether any patterns are apparent may be an eye-opening experience.⁶⁸

Here are two examples of how the courts determined that land use decision makers were not impartial:

⁶⁴ *Londoner v. Denver*, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (U.S. 1908) cited by Olson, Daniel M. "Procedural Due Process: The Basics Plus Town of Castle Rock." *The Municipality*. December 2005. League of Wisconsin Municipalities.

⁶⁵ Easley, V. Gail and David A. Theriaque. *The Board of Adjustment*. 2005. Planners Press, p. 95.

⁶⁶ Blaesser, Brian W. et al. *Land Use and the Constitution: Principles for Planning Practice*. 1989. Planners Press. pp.42-43; Hunter, Ted and Jim Driscoll. "The Planning Commissioner as Judge." *The Commissioner*, Summer 1996; *Old Tuckaway Assocs. Ltd. Partnership v. City of Greenfield*, 180 Wis.2d 254, 509 N.W.2d 323 (Ct. App. 1993); Stephens, Otis and John Scheb. *American Constitutional Law*, 3ed. 2003. Belmont, CA: Wadsworth.

⁶⁷ *Marris v. Cedarburg*, 176 Wis. 2d 14, 498 N.W.2d 842 (1993)

⁶⁸ Dale, Gregory. "The Ethics of Bias." *Planning Commissioners Journal*, article #571.

- A zoning board member made negative comments about the applicant and her request, referring to it as a “loophole in need of closing.” The court determined the applicant was deprived of a fair hearing and required a rehearing without the participation of the member.⁶⁹
- A county zoning committee member, who was also a town board chair, co-signed a letter as town board chair expressing his positive opinion of a gravel company. Within a few months, the gravel company applied to the county for a conditional use permit and included the town chair’s letter as part of their application. When the town board chair/county zoning committee member voted to grant this conditional use permit, the court determined he was an advocate who had demonstrated an impermissibly high risk of bias.⁷⁰

If You Are Not Impartial, Recuse Yourself

For each request before the zoning board, individual zoning board members must decide for themselves whether their relationships or interests could bias their judgment or give an appearance of bias causing them to be or appear partial. We recommend that zoning board members use the “sniff test” when determining whether they are biased or impartial: If it would smell fishy for you to vote on the matter at hand, **recuse** yourself. Another way to determine whether you are impartial and appear impartial is to think about whether you would be comfortable if the headline in your local newspaper described your background, your personal and professional relationships, and your participation or vote on the matter at hand. If you are unsure, you should discuss the matter with the zoning board’s legal counsel.

If, as a zoning board member, you do not feel you can be and appear impartial in a given decision, the best approach is to recuse yourself. To recuse yourself, do not vote and do not have any discussion or involvement in the matter in question. We recommend that you physically remove yourself from the table where the zoning board is seated while the matter is discussed to make it clear you are not serving as a member of the zoning board. The meeting minutes should reflect that you have recused yourself. If you have recused yourself on a matter, you may offer testimony

Recuse - to disqualify because of prejudice or conflict of interest on a matter.

If you recuse yourself:

- Do not vote AND
- Do not discuss the topic with the zoning board.

⁶⁹ *Marris v. Cedarburg*, 176 Wis. 2d 14, 498 N.W.2d 842 (1993)

⁷⁰ *Keen v. Dane County Bd. of Supervisors*, 2004 WI App 26, 269 Wis. 2d 488, 676 N.W.2d 154.

Ex Parte - without the other party being present.

as a member of the public.

Avoid Ex Parte Communication

Zoning board members should not have conversations or receive correspondence regarding a variance, appeal or conditional use that is before the board or which may come before the board except during a noticed meeting or hearing. Such contacts outside a meeting or hearing are known as ex parte communication.

The reason for this requirement is fairly simple: an applicant who comes before the zoning board is entitled to know about and have an opportunity to rebut any information that decision makers rely on in making the decision. Discussion outside the meeting regarding procedural matters, such as scheduling a meeting or explaining how to file an application, are permissible. Ex parte communication is not a concern for legislative (ordinance or rule adoption) or ministerial matters (simple permits).

We recommend the following steps regarding ex parte communication:

- First, avoid ex parte communication by suggesting that members of the public who approach you outside of a meeting present information in open hearings or by written comment to the decision-making body.
- Second, if you are not able to avoid ex parte communication, disclose the communication at the hearing and make the information part of the record so that it can be considered in decision-making. The individual zoning board members will then determine its credibility and weight in deciding their vote on the matter.

Provide an Opportunity to Present at Hearings

Typically the zoning board chair invites the applicant to present at a hearing, followed by all interested parties. A zoning board that set a 5-minute time limit per presenter and allowed additional time for the applicant to describe the proposal complied with due process.⁷¹ To ensure that all interested parties have a chance to provide testimony, we recommend that after everyone interested in presenting appears to have done so, the chair ask if there is anyone

⁷¹ *Roberts v. Manitowoc County Bd. of Adjustment*, 2005 WI App 2111

else who wants to testify about the proposal at hand.

Avoid Statutory Conflicts of Interest

In addition to due process and impartiality, zoning board members are also subject to specific conflict of interest provisions found in Wisconsin Statutes:

- **Personal financial gain** - State laws⁷² prohibit public officials from taking official actions that substantially affect a matter in which the official, an immediate family member, or an organization with which the official is associated has a substantial financial interest. Similarly, an official may not use public office for financial gain or to gain anything of substantial value for the official, an immediate family member, or an organization with which the official is associated. This statute is enforced by local district attorneys and the State Attorney General⁷³ with forfeitures up to \$1000 per violation.⁷⁴
- **Misconduct in office** - State law prohibits an officer from intentionally performing, or failing to perform, certain acts including actions the officer knows are in excess of their lawful authority or are forbidden by law in their official capacity.⁷⁵
- **Private interests in public contracts** - State laws also prohibit certain actions when an official bids for a contract, or has authority to exercise duties under a contract, if the official has a private financial interest in the contract, subject to a \$15,000 per year exception for total receipts and disbursements under the contracts.⁷⁶ In certain cases, recusal will not prevent a violation of the law,⁷⁷ and the official may have to choose between doing business with the governmental unit and serving as an officer. This may be an issue when the zoning board decides conditional use permits or retains consulting services in which members have an interest.

In short:

- Don't accept items or services offered to you because of your position.
- Don't participate in decisions which affect you financially.

⁷² Wis. Stat. § 19.59(1)

⁷³ Local officials online tutorial, State of Wisconsin Ethics Board, available: <http://ethics.state.wi.us/LocalOfficials/LocalOfficial1.htm>

⁷⁴ Wis. Stat. § 19.59 (7)(a)

⁷⁵ Wis. Stat. § 946.12; *State v. Tronca*, 84 Wis.2d 68, 267 N.W.2d 216 (1978) states when 946.12(3) was created in 1953 the notes of the Judiciary Committee on the Criminal Code carried the following comment: "quasi-judicial functions call for the exercise of judgment, and if the officer acts honestly although with not the best of judgment, he is not guilty."

⁷⁶ Wis. Stat. § 946.13

⁷⁷ Wis. Stat. § 946.13(1)(a)

Marris v. City of Cedarburg, 176 Wis.2d 14 (1993)

498 N.W.2d 842

KeyCite Yellow Flag - Negative Treatment
 Declined to Extend by Sills v. Walworth County Land Management
 Committee, Wis App., April 3, 2002

176 Wis.2d 14
 Supreme Court of Wisconsin.

Jean E. MARRIS, Plaintiff-Appellant-Petitioner,
 v.
 CITY OF CEDARBURG, a municipal corporation,
 and the Board of Zoning Appeals for the City
 of Cedarburg, Respondents-Respondents.

No. 91-1160.

Oral Argument March 2, 1993.

Decided May 11, 1993.

City board of zoning appeals ruled that property had lost its legal nonconforming use status because of owner's structural repairs or alterations in excess of 50% of property's current assessed value. Property owner sought review. The Circuit Court, Ozaukee County, Warren A. Grady, J., affirmed. Property owner appealed. The Court of Appeals, 168 Wis.2d 358, 485 N.W.2d 838, affirmed. Property owner appealed. The Supreme Court, Shirley S. Abrahamson, J., held that: (1) comments of chairperson of board referring to property owner's legal position as "loophole" in need of "closing" and suggestion that board members and assistant city attorney get property owner "under the Leona Helmsley rule" created impermissibly high risk of bias requiring chairperson to recuse himself, and (2) remand was required to board of zoning appeals for application of guidelines set forth in court's opinion to determine whether property owner's improvements constituted structural repairs or alterations so that property lost its nonconforming use status.

Court of Appeals reversed; case remanded to circuit court.

Attorneys and Law Firms

****844 *18** For the petitioner-appellant-petitioner there were briefs by Leslie F. Kramer, Frederick T. Rikkers and Tomlinson, Gillman & Rikkers, S.C., Madison, and oral argument by Frederick T. Rikkers.

For the respondents-respondents there was a brief by Lowell K. Levy, Dennis H. Milbrath and ***19** Levy & Levy, S.C., Cedarburg, and oral argument by Dennis H. Milbrath.

Amicus curiae brief was filed by Curtis A. Witynski, Madison, for the League of Wisconsin Municipalities.

Opinion

SHIRLEY S. ABRAHAMSON, Justice.

This is a review of an unpublished decision of the court of appeals filed March 11, 1992, 168 Wis.2d 358, 485 N.W.2d 838, affirming a judgment of the circuit court for Ozaukee County, Warren A. Grady, Circuit Judge. The circuit court affirmed a decision of the Board of Zoning Appeals for the ****845** City of Cedarburg (the Board) determining that Jean E. Marris's property had lost its legal nonconforming use status¹ because total lifetime structural repairs or alterations to the property, as defined by the city ordinance, exceeded 50% of the property's current assessed value. The court of appeals also rejected Marris's argument that she was deprived of a fair hearing before the Board when the chairperson of the Board failed to recuse himself.

The case presents two issues: (1) Did the chairperson of the Board prejudice the matter and create an impermissibly high risk of bias so that his refusal to recuse himself deprived Marris of a fair hearing? (2) What improvements to Marris's property constitute "structural repairs or alterations" under the city of Cedarburg ordinance which limits the total lifetime ***20** structural repairs or alterations to not more than 50% of the property's assessed value?²

We conclude that Marris was denied her right to a fair hearing. Statements made by the Board's chairperson indicated that he had prejudged Marris's case and created an impermissibly high risk of bias. Under these circumstances he should have recused himself in order that Marris have a fair hearing. Accordingly, we reverse the court of appeals' decision. We remand the matter to the circuit court with instructions to remand it to the Board to determine, consistent with our interpretation of the city of Cedarburg zoning code, whether the total lifetime structural repairs or alterations to Marris's property exceed 50% of the property's current assessed value.

*21 I.

The material facts are not in dispute for purposes of this appeal. Marris owns real property located in the city of Cedarburg, Ozaukee County, Wisconsin. The property is zoned for residential use. Two buildings exist on the property, a residence located on the front portion and a second building on the rear portion. The rear building is the subject of this case.

When Marris purchased the property in 1976, her offer to purchase was contingent upon obtaining approval from the Cedarburg Plan Commission to use the rear building as office space for her construction and real estate businesses.³ After Marris submitted plans to the Commission, it granted her petition for a substitute legal nonconforming use. Marris took possession of the property in 1977. Over the next two years, she gradually converted the building to office use.

In 1988, Marris began converting the rear building into office space for three rather than two businesses. She did not seek or obtain building permits for this project. Alerted by a neighbor's complaint, the city building inspector examined the rear building. Because no building permits had been issued and because the effect of the construction on the structure's status **846 as a legal nonconforming use was unclear, the building inspector issued a stop work order. The building inspector advised Marris that any use of the building other than that permitted by a proper continuation *22 of the legal nonconforming use would violate the zoning code. Consequently, Marris sought approval from the city Plan Commission for the proposed change in the use of the building.

On March 7, 1988, the Plan Commission recommended that the Board conduct a public hearing and asked the Board for an interpretation of the nonconforming use provisions of the county zoning ordinance at issue in this case. The Board conducted public hearings on April 12, 1988, and May 3, 1988, and conducted an on-site inspection of the building in question. At the May 3, 1988, hearing, the Board decided the property had lost its legal nonconforming use status. This oral ruling was subsequently incorporated in a written decision dated June 17, 1988. Marris sought judicial review and, in a

decision dated May 31, 1989, the Ozaukee County circuit court held that the Board had erred and remanded the case for further findings consistent with its opinion.

After the case was remanded, the Board held a closed meeting on October 3, 1989, during which the assistant city attorney presented a status report on Marris's case. At the close of the meeting, the Board scheduled a public hearing for December 5, 1989, to determine whether to confirm the stop work order and whether to retain the legal nonconforming use status of Marris's building.

By letter dated November 17, 1989, Marris's attorney requested Board chairperson John Kuerschner to recuse himself from the December 5, 1989, hearing. The request was based on comments Kuerschner had made at the Board's closed meeting on October 3, 1989. At the December 5, 1989, hearing, Marris's attorney renewed his request that the chairperson recuse himself, *23 but Kuerschner refused to do so, stating that he was impartial.

The Board reviewed the building inspector's videotape of the property at the hearing on December 5 and heard Marris's testimony. The hearing was adjourned until December 14, 1989, when the Board conducted an on-site inspection of the property. On February 20, 1990, the hearing was reconvened and the Board heard additional testimony. Both parties filed briefs in lieu of argument.

The Board rendered its decision at a public hearing on March 27, 1990, and filed its written decision on May 4, 1990. The Board concluded that the lifetime structural repairs or alterations to Marris's property exceeded 50% of the current assessed value and that the property had therefore lost its legal nonconforming use status. For the second time, Marris petitioned the Ozaukee County circuit court for review.

In a written decision dated March 28, 1991, the Ozaukee County circuit court affirmed the Board's determination that Marris's property had lost its legal nonconforming use status because lifetime structural repairs or alterations to the property exceeded 50% of the property's current assessed value. Marris appealed to the court of appeals and then sought review in this court.

Further facts will be set forth in the discussion of each issue.

II.

[1] [2] Since no statutory provision is made for judicial review of a local zoning board's decision, our review of the Board's action in this case is by way of certiorari.

*24 *State ex rel. Johnson v. Cady*, 50 Wis.2d 540, 549-50, 185 N.W.2d 306 (1971). The scope of our review by certiorari is limited to determining the following: (1) Whether the Board "kept within its jurisdiction"; (2) whether the Board "acted according to law"; (3) whether the Board's action "was arbitrary, oppressive, or unreasonable and represented its will and not its judgement"; and (4) whether the evidence was such that the Board "might reasonably make the order or determination in question."⁴ The **847 phrase "acted according to law" has been interpreted as including "the common-law concepts of due process and fair play."⁵

[3] The parties agree that Marris was entitled to a fair and impartial hearing under these common law concepts of due process and fair play, which include the right to have matters decided by an impartial board.⁶ *25 The parties further agree that due process and fair play can be violated "when there is bias or unfairness in fact[, or when] ... the risk of bias is impermissibly high."⁷ The parties disagree whether Marris received a fair and impartial hearing.

[4] In determining whether Marris was afforded due process and fair play, we recognize that zoning decisions implicate important private and public interests; they significantly affect individual property ownership rights as well as community interests in the use and enjoyment of land. Furthermore, zoning decisions are especially vulnerable to problems of bias and conflicts of interest because of the localized nature of the decisions, the fact that members of zoning boards are drawn from the immediate geographical area, and the adjudicative, legislative and political nature of the zoning process.⁸ Since biases may distort judgment, impartial decision-makers are needed to ensure both *26 sound fact-finding and rational decision-making as well as to ensure public confidence in the decision-making process.⁹

[5] Nevertheless, a board member's opinions on land use and preferences regarding land development should not necessarily disqualify the member from hearing a zoning matter. Since they are purposefully selected from the

local area and reflect community values and preferences regarding land use,¹⁰ zoning board members will be familiar with local conditions and the people of the community and can be expected to have opinions about local zoning issues.

The zoning decision in this case requires that the Board examine a specific piece of land and the activities of a particular property owner. It must engage in fact-finding and then make a decision based on the application of those facts to the ordinance. In this case, where established criteria direct the Board's fact-finding and decision-making, Marris should expect that a decision will be made on the basis of the facts and the law. If a Board member prejudges the facts or the application of the law, then Marris's right to an impartial decision-maker is violated.

Determining whether a board member has prejudged a matter requires an examination of the facts of the individual case. In this case we look to the statements **848 made by chairperson Kuerschner. A clear statement "suggesting that a decision has already been reached, or prejudged, should suffice to invalidate a decision."¹¹

*27 Marris asserts that the chairperson of the Board prejudged her case before the December 5 public hearing and before the Board reached a final decision. Accordingly, she contends that she did not have a fair and impartial hearing. To support her position Marris points to three comments made by the chairperson.¹² First, the chairperson referred to Marris's legal position as a "loophole" in need of "closing." Marris claims that this reference indicates the chairperson's intention to terminate her legal nonconforming use status rather than to apply the ordinance objectively and impartially to the facts of her case. Second, the chairperson suggested to Board members and the assistant city attorney that they should try to "get her [Marris] on the Leona Helmsley rule." Marris argues *28 that this suggestion illustrates the chairperson's personal bias against Marris and her claim. Third, the chairperson questioned how the Board, in analyzing expenditures, could know whether Marris "bought a door for that building or for another building she built." Marris asserts that this question indicates that the chairperson had prejudged her credibility. Marris asserts that because the totality of the comments indicate

prejudgment, the chairperson's refusal to recuse himself denied her a fair hearing.

The Board explains that the chairperson's comments, when taken in context, do not demonstrate prejudice of the matter. While the Board acknowledges that "loopholes" was an "unfortunate" word choice, it claims that the chairperson was referring to questions about the zoning ordinance and was merely attempting to clarify the findings required by the circuit court.¹³ The Board asserts that, regardless of the "loopholes" comment, it engaged in objective fact-finding. In support of its contention, the Board's brief points out that, as a result of the October 3, 1989, discussion, it hired experts to determine when Marris made the improvements and their cost. According to the Board, it needed this information to comply with the ordinance and the circuit court's directive.

The Board explains the chairperson's statement about "get[ting Marris] on the Leona Helmsley rule" by stating that Helmsley's extensive remodeling expenditures were in the news at the same time that the Board was grappling with Marris's remodeling expenditures. The Board's brief argues that these references to Leona *29 Helmsley, while they may seem inappropriate, cannot be understood when taken out of this context three years after the fact. The brief asserts that these references do not mention Helmsley's legal problems, do not compare Marris with a convicted felon, and do not show actual bias.¹⁴

Finally, the Board argues that the chairperson's question about the documentation **849 of Marris's renovation expenses was proper, since Marris's records concerning the expenses were incomplete at the time the comment was made.

We recognize that it may be difficult, several years after the fact, to differentiate a predisposition from an ill-advised choice of words and from a statement showing prejudice. Nevertheless we conclude that the chairperson's comments about Marris created a situation in which the risk of bias was impermissibly high.

We consider Kuerschner's reference to Marris's legal position as a "loophole" in need of "closing" more than an "unfortunate choice of words" when viewed in the context of the Leona Helmsley comment. Taken together, these statements overcome the presumption *30 of honesty and integrity that would ordinarily be applied to this case.

Guthrie v. WERC, 111 Wis.2d 447, 455, 331 N.W.2d 331 (1983); *State ex. rel. Northwestern Dev. Corp. v. Gehrz*, 230 Wis. 412, 421-22, 283 N.W. 827 (1939).

While it is true that Leona Helmsley's remodeling expenditures were in the news during the time the Board decided Marris's case, that fact alone does not explain why the chairperson would suggest to Board members and the assistant city attorney that they "get her [Marris] under the Leona Helmsley rule." The phrase "get her" indicates prejudice and a desire to prosecute. Impartial decision-makers do not "get" the parties before them. Rather, they objectively apply the law to the facts of each case. The chairperson's use of this phrase created an impermissibly high risk of bias because the statement indicates the chairperson's opinion that Marris's legal position was without merit and was in fact deserving of punishment.

While it is impossible to determine exactly what the chairperson meant, it seems clear that "the Leona Helmsley rule" is not synonymous with the zoning ordinance the Board was required to apply to the facts of Marris's case. Furthermore, by making this statement, the chairperson implicitly compared Marris to Leona Helmsley. Since Helmsley was convicted of tax evasion, this statement indicates that the chairperson's intent was to rule against Marris at the December 5, 1989, hearing. The comment created an impermissibly high risk of bias.

[6] We do not believe that the chairperson's question regarding the documentation of Marris's renovation expenditures is indicative of prejudice or creates a situation where the risk of bias is impermissibly high. *31 This comment could well have been made within the context of a proper factual inquiry. However, some of the chairperson's comments clearly indicated that he had prejudged Marris's case, thus creating an impermissibly high risk of bias. Therefore we conclude that the chairperson erred when he refused to recuse himself from the December 5, 1989, hearing and that he deprived Marris of her right to common law due process. Accordingly, the Board's decision must be vacated and the matter remanded to the Board for a new hearing, without chairperson Kuerschner's participation.

III.

[7] The second issue before us is a determination of what improvements¹⁵ to Marris's property constitute structural repairs or alterations under the Cedarburg zoning ordinance. Identifying the structural repairs or alterations is important because the ordinance provides that to retain legal nonconforming use status the "total lifetime structural repairs or alterations" to a property "shall not exceed 50% of the current assessed value." Cedarburg Zoning Code sec. 16.0901.¹⁶ While it permits **850 improvements to nonconforming use structures, *32 the Cedarburg zoning ordinance imposes restrictions on the dollar amount of structural repairs or alterations.

The parties agree that the word "structural" modifies the word "alterations" as well as the word "repairs" and that the ordinance defines the phrase "structural alterations." They accept the definition of "structural alterations" as set forth in the ordinance and do not debate the meaning of this phrase.¹⁷ The parties' disagreement centers on the proper meaning of the phrase "structural repairs," which is not defined in the ordinance.

[8] [9] In the interpretation of ordinances, the rules of statutory interpretation apply. *County of Columbia v. Bylewski*, 94 Wis.2d 153, 169 n. 7, 288 N.W.2d 129 (1980). The meaning of words in an ordinance presents a question of law, and the "blackletter" rule is that a court decides the meaning of an ordinance independently of a board's or other courts' interpretations. *33 Courts, however, give varying degrees of deference to agency interpretations of a law and frequently refrain from substituting their interpretation for that of the agency charged with administration of the law. *West Bend Educ. Assn. v. WERC*, 121 Wis.2d 1, 11-12, 357 N.W.2d 534 (1984). The Board argues that it has had extensive experience interpreting the ordinance and that its interpretation therefore is entitled to great weight and should not be upset if a rational basis for the interpretation exists. While we concede that the Board has expertise, we are concerned that any discussion of the phrase "structural repairs" in the Cedarburg ordinance may have significance beyond interpreting the Cedarburg ordinance. The ordinance in question is substantially similar to a state statute and to ordinances across the state, although the language of the state statute and the various ordinances may vary. Under these circumstances, we conclude that one board's interpretation of the language in a single case should not be viewed as controlling or persuasive and

that we should interpret the term "structural repairs" *de novo*. Furthermore, as our discussion makes clear, we do not think the Board's interpretation of the Cedarburg ordinance is reasonable.

[10] [11] In determining the meaning of the Cedarburg ordinance it is helpful to understand its objective. Ordinances governing the improvement of a structure that has legal nonconforming use status are intended to balance two competing policies: protection of property ownership rights and protection of the community's interest in the speedy elimination of nonconforming uses. *State ex rel. Covenant Harbor Bible Camp v. Steinke*, 7 Wis.2d 275, 283, 96 N.W.2d 356 (1956). These ordinances avoid imposing undue hardship *34 on property owners by allowing them to continue the nonconforming use of the property and to make reasonable renovations to prevent deterioration. However, to ensure that the life of the structure is not extended indefinitely and that the nonconforming use is gradually eliminated, these ordinances also limit the amount of structural repairs or alterations property owners can make. The underlying policy goal is to "encourage at least some improvement and modernization of nonconforming buildings at the expense of extending the life expectancy of nonconforming uses." *Waukesha County v. Seitz*, 140 Wis.2d 111, 120-21, 409 N.W.2d 403 (1987) (quoting 1 R. Anderson, *American Law of Zoning* 3d sec. 6.56, at **851 617 (1986)). Thus, an interpretation and application of the ordinance must accomplish the objective of the ordinance by balancing the competing interests in a reasonable way.

[12] Marris asserts that the phrase "structural repairs or alterations" simply means "structural alterations" as that phrase is defined in the ordinance. Thus, according to Marris, structural repairs or alterations means changes of supporting members of a structure such as foundations, bearing walls, columns, beams or girders. The import of Marris's argument is that the word "repairs" in the ordinance is superfluous.

Marris's interpretation of the ordinance does not persuade us to declare words of the ordinance superfluous. We do not believe her interpretation strikes the proper balance between the rights of the property owner and the community. By allowing the property owner to extend the life of the nonconforming use by making drastic changes

in the building, Marris's interpretation favors the property owner's interest over that of the community.

*35 The Board argues that the phrase "structural repairs" is not mere surplusage. It urges, and the circuit court and court of appeals agree, that the phrase "structural repairs" means each and every improvement to a legal nonconforming use that is not considered ordinary maintenance.

The Board bases its interpretation of "structural repairs" on the last sentence of the ordinance's definition of the phrase "substantial improvement." The ordinance defines "substantial improvement" as any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the present equalized assessed value of the structure. Section 16.1402.¹⁸ The ordinance then goes on to say that "[o]rdinary maintenance repairs are not considered structural repairs, modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other structural components." The Board argues that the provision in the ordinance that "ordinary maintenance repairs are not considered structural repairs" implies that structural *36 repairs include any improvements that are not considered ordinary maintenance. The Board's brief seems to urge that the court interpret the ordinance's list of ordinary maintenance repairs as all-inclusive.¹⁹

The Board asserts that its interpretation is consistent with the ordinance's purpose: the definition of ordinary maintenance repairs is broad enough to allow the property owner to preserve the building's integrity, thereby protecting property rights, and yet limited enough to ensure that the nonconforming use of the structure is not extended beyond a reasonable time. We do not agree with the Board. We conclude that its interpretation favors the community's interest over that of the property owner.

While the ordinance does state that ordinary maintenance repairs are not structural **852 repairs, it does not state, as the Board contends, that all improvements except ordinary maintenance repairs constitute structural repairs. Some improvements, such as the installation of additional lighting, fall outside the Board's definition of ordinary maintenance, yet they *37 appear unlikely to prolong the life of the nonconforming use structure.

Our task is to distinguish between structural repairs, which fall within the 50% limitation of the ordinance, and non-structural repairs which do not. It is not an easy task. Throughout the country, laws similar to the Cedarburg ordinance have generated litigation over the types of improvements that are limited by law. Indeed one of the most complex problems besetting municipalities, according to at least one commentator, is how to handle nonconforming uses of property. 4 E.C. Yokley, Zoning Law and Practice sec. 22-1, p. 1 (1979).

The cases grappling with statutory terms such as "structural alteration" or "structural repairs" do not provide a clear or consistent definition.²⁰ Each case turns on the precise language of the applicable law and the particular facts before the court. Courts interpreting these provisions have generally concluded that no one rule can be established or applied and that each case must be judged on its own unique facts.

We cannot set forth a hard and fast definition which easily distinguishes between structural and non-structural repairs. Any discussion of the meaning of the phrase "structural repairs" must be in terms of the purpose of this type of ordinance, the language of *38 the ordinance, and the proposed improvement. Nonetheless, some general guidelines can be set forth. These guidelines must be applied by zoning boards with common sense and consideration of all the circumstances.

[13] [14] We construe structural repairs in this ordinance to include work that would convert an existing building into a new or substantially different building, or work that would affect the structural quality of the building. We also construe structural repairs in this ordinance to include proposed improvements that would contribute to the longevity or permanence of the building. This characterization of structural repairs satisfies the public interest in eliminating nonconforming uses. If work indefinitely prolonging the natural life of nonconforming buildings were permitted, the purpose of zoning to achieve uniformity would be defeated.

[15] However, under our characterization of structural repairs an owner is permitted to modernize facilities. The right to continue a use existing at the time a zoning restriction becomes effective necessarily embraces preservation of that use. Therefore proposed improvements such as the addition of acoustical ceilings

or the installation of heating, electricity, plumbing (including fixtures) or insulation, might not ordinarily be regarded as structural repairs. Such improvements might be characterized as remodeling, or as improving the appearance or efficiency of a nonconforming use structure. Likewise, repairs that are reasonably necessary to prevent deterioration might not be classed as structural repairs. It is in the community's interest that buildings be maintained in good, safe and sanitary condition. We recognize that any modernization or maintenance carries with it some possibility of extending the life expectancy of the nonconforming *39 use. Yet, in order to respect ownership rights, some modernization and maintenance must be permitted.

We have attempted to provide a functional definition to guide the Board in the exercise of its discretionary decision-making. The Board must use its discretion in

applying this functional definition of structural repairs in a fair and reasonable manner in each case, considering the language of the ordinance, the purposes of the ordinance **853 and the need to balance individual and community interests.

For the reasons set forth, we reverse the decision of the court of appeals and remand the matter to the circuit court for remand to the Board of Zoning Appeals for the City of Cedarburg for further proceedings consistent with this opinion.

The decision of the court of appeals is reversed and the cause remanded to the circuit court.

All Citations

176 Wis.2d 14, 498 N.W.2d 842

Footnotes

- 1 A legal nonconforming use is usually defined in the law of zoning as a use that lawfully existed on the effective date of a zoning ordinance and that may be maintained thereafter although it does not conform to the use restrictions of the ordinance. *City of Lake Geneva v. Smuda*, 75 Wis.2d 532, 536-37, 249 N.W.2d 783 (1976); *Walworth County v. Hartwell*, 62 Wis.2d 57, 60, 214 N.W.2d 288 (1974).
- 2 The respondents are the City of Cedarburg and the Board of Zoning Appeals for the City of Cedarburg. In discussing the respondents' arguments, we refer to the Board of Zoning Appeals for the City of Cedarburg and the City of Cedarburg collectively as the Board.
At the court of appeals the meaning of "current assessed value" and the 50% calculation were litigated. Neither party challenges the court of appeals' interpretation of these provisions.
Marris also argues in this court that the Board and the City of Cedarburg are estopped from including in their calculations the work performed in 1972 and 1977. We have examined her arguments, and we agree with the circuit court and the court of appeals that she has not set forth sufficient grounds to establish estoppel. *McKenna v. State Highway Commn*, 28 Wis.2d 179, 135 N.W.2d 827 (1965); *Snyder v. Waukesha Zoning Board*, 74 Wis.2d 468, 247 N.W.2d 98 (1976); *State v. City of Green Bay*, 96 Wis.2d 195, 291 N.W.2d 508 (1980).
- 3 The former owner had, since 1972, used the rear building as a retail flower shop, which had legal nonconforming use status. Prior to 1972, the rear building had been used as a beer distributing company's warehouse. Originally, the rear building was used as a barn or a tool shed.
- 4 *State ex rel. Lomax v. Leik*, 154 Wis.2d 735, 739-40, 454 N.W.2d 18 (Ct App. 1989) (citing *State v. Goulette*, 65 Wis.2d 207, 215, 222 N.W.2d 622 (1974)). See also *Snyder v. Waukesha County Zoning Board of Adjustment*, 74 Wis.2d 468, 475, 247 N.W.2d 98 (1976).
- 5 *State v. Goulette*, 65 Wis.2d 207, 215, 222 N.W.2d 622 (1974) (quoting *State ex rel. Ball v. McPhee*, 6 Wis.2d 190, 199, 94 N.W.2d 711 (1959)).
In this case no statute or ordinance governs disqualification of a board member. The court has recognized a common law duty of disqualification. *Kachian v. Optometry Examining Board*, 44 Wis.2d 1, 13, 170 N.W.2d 743 (1969); *Guthrie v. WERC*, 111 Wis.2d 447, 457-58, 331 N.W.2d 331 (1983).
- 6 Although the parties characterize the Board's hearing as adjudicative, we need not label these proceedings quasi-legislative or quasi-judicial to determine whether the decision-maker must be impartial. We need look only to the characteristics of the proceedings to determine whether the decision-maker must be impartial. In this case the Board must make factual determinations about an individual property owner and then apply those facts to the ordinance. We conclude that common law notions of fairness require an impartial decision-maker under these circumstances.

7 *Guthrie v. Wisconsin Employment Relations Commn*, 111 Wis 2d 447, 454, 331 N.W.2d 331 (1983). Both parties rely on *Guthrie* which involved a state, not a local governmental, agency. The case recognizes common law as well as constitutional concepts of due process and fair play. It adopted and applied the rule (originating in the common law and sec. 757.19(2)(c) which applies only to judges) that when an attorney represents a party in earlier proceedings due process requires that the attorney may not act as a decision-maker in the same case. Although *Guthrie* speaks of both common law and constitutional due process, the parties have not analyzed this case in terms of federal or state constitutional due process.

8 Mark Cordes, *Policing Bias and Conflicts of Interest in Zoning Decisionmaking*, 65 N D L Rev. 161, 161-62 (1989).

9 *Id.* at 162-63.

10 *Id.* at 208.

11 *Id.* at 208.

12 The comments to which Marris objects were set forth by Marris's counsel in a letter to the chairperson dated November 17, 1989, requesting that the chairperson recuse himself. The letter is part of the record.

The chairperson's full comments are preserved on a tape recording of the October 3, 1989, meeting of the Board. Marris requested that the Ozaukee County circuit court supplement the record with this tape. The Board objected to supplementing the record. The Ozaukee County circuit court entered its decision affirming the decision of the Board without ruling on the motion. The circuit court did not address the issue of bias. The tape recording was included in the record on appeal to the court of appeals as certified by the circuit court even though apparently it was not part of the certiorari record in the circuit court. According to the files in this court both parties argued the merits of the issue of bias before the court of appeals.

Prior to oral argument the Board moved this court to strike references in Marris's brief to direct quotations taken from the tape recording of the Board's meeting because the tape recording was not properly before the circuit court. This court denied the Board's motion.

13 The circuit court ordered the Board to determine the assessed value of the property at the last structural repair or alteration and the cumulative total of that proposed alteration and all previous like repairs or alterations.

14 In September, 1989, New York real estate billionaire Leona Helmsley was convicted of 33 counts of tax evasion. Helmsley, the self-proclaimed queen of the Helmsley Palace hotel, had been charged with evading personal income taxes by disguising as business expenses some \$4 million in renovation costs at her estate in Greenwich, Connecticut. Typical of the items reported about Helmsley in news magazines was the following: "As testimony revealed, she was as ferocious with her employees as a bulldog, albeit one with a face-lift, summoning workmen with, Hey, you with the dirty fingernails! and icily firing a vice president at Christmas time while being fitted by her dressmaker." Margaret Clarson, *Revenge of the Little People*, Time, Sept. 11, 1989, at 27.

15 The disputed items include pouring concrete over an existing dirt floor, the replacement of a staircase and loose boards on the second floor, the installation of bathroom fixtures and the installation of electricity and additional lighting.

16 **EXISTING NONCONFORMING USES.** The lawful nonconforming use of a structure, land or water existing at the time of the adoption or amendment of this Ordinance may be continued although the use does not conform with the provision of this Ordinance, subject to the following conditions:

....
Total lifetime structural repairs or alterations shall not exceed 50 percent of the current assessed value of the structure unless the use thereafter conforms to the provisions of this Ordinance....

Section 62.23(7)(h), Stats.1990-91, provides: "(h) *Nonconforming uses.* The lawful use of a building or premises existing at the time of the adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of an ordinance. Such nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 per cent of the assessed value of the building unless permanently changed to a conforming use...."

17 Section 16.1402 **SPECIFIC WORDS AND PHRASES.**

....
Structural Alteration

Any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams, or girders.

18 16.1402 **SPECIFIC WORDS AND PHRASES.**

....
Substantial Improvement

Any repair, reconstruction or improvement of a structure, the cost of which, equals or exceeds 50 percent of the present equalized assessed value of the structure either before the improvement or repair is started or if the structure has been damaged, and is being restored, before the damage occurred ...

.... Ordinary maintenance repairs are not considered structural repairs, modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling and the replacement of doors, windows, and other structural components.

- 19 The definition of structural repairs that the Board urges is very broad. For example, in the videotape of the premises, the city building inspector repeatedly described work, such as electrical wiring, plumbing, and lighting, as penetrating structural walls or beams, intimating that any such penetration constituted a structural repair. Also, a contractor testified that any repair not set forth as ordinary maintenance in the ordinance is a structural repair. He testified that the following are "structural repairs" because they become part of the structure: (1) pouring a concrete floor in place of a gravel floor; (2) adding a bathroom or toilet; (3) adding a partition; (4) adding a shower door on the shower; (5) adding electrical wiring; and (6) placing a sink in the basement. The Board relied on this testimony in its briefs to support its conclusions.
- 20 For discussions of the issue and cases, *see e.g.*, 1 Robert M. Anderson, *American Law of Zoning* 3d sec. 6.02, 6.04, 6.07, 6.45, 6.46, 6.47, 6.56, 6.57 (1986); 8A McQuillin, *The Law of Municipal Corporations*, secs. 25.183, 25.184, 25.210-25.212a (3d ed. 1986 rev. ed.); 4 E.C. Yokley, *Zoning Law and Practice* sec. 22-10 (1979); Annot., *Alteration, Extension, Reconstruction, or Repair of Nonconforming Structure or Structure Devoted to Nonconforming Use as Violation of Zoning Ordinance*, 63 A.L.R.4th 275 (1988).

KeyCite Yellow Flag - Negative Treatment
 Declined to Extend by Murphy v. Oconto County Drainage Bd.,
 Wis.App., March 1, 2016

269 Wis.2d 488

Court of Appeals of Wisconsin.

William KEEN, Lisa Keen, Oliver Himsel, Karen
 Lamere, Clement Lamere, Floyd Lamere, Bertilla
 Lamere, and Manfred Engburg, Plaintiffs,
 Margaret L. Jones, Plaintiff-Appellant,

v.

DANE COUNTY BOARD OF SUPERVISORS, Dane
 County Zoning and Natural Resources Committee
 and Payne & Dolan, Inc., Defendants-Respondents.

No. 03-0734.

Submitted on Briefs Oct. 14, 2003.

Opinion Filed Dec. 23, 2003.

Synopsis

Background: Local landowners brought certiorari action challenging decision of county board that upheld decision of county zoning and natural resources committee to grant conditional-use permit to operate gravel pit. The Circuit Court, Dane County, Patrick J. Fiedler, J., affirmed. Landowners appealed.

Holdings: The Court of Appeals, Dykman, J., held that:

[1] presumption-of-validity doctrine would not be expanded to presume a basic fact that committee considered all required factors;

[2] committee's determinations constituted findings;

[3] letter that was written by member of committee and that was submitted in support of application evidenced an impermissibly high risk of bias; and

[4] lease from member of committee to applicant's agent did not constitute impermissible bias.

Reversed and remanded with directions.

Attorneys and Law Firms

****156 *491** On behalf of the plaintiff-appellant, the cause was submitted on the briefs of Robert J. Kay and Robert A. Mich, Jr., of Kay & Andersen, S.C., Madison.

On behalf of the defendant-respondent, Payne & Dolan, Inc., the cause was submitted on the brief of William F. White and Thomas P. Heneghan of Michael Best & Friedrich LLP, Madison.

On behalf of the defendant-respondent, Dane County Corporation Counsel, the cause was submitted on the brief of David R. Gault, assistant corporation counsel, Madison.

Before DYKMAN, VERGERONT and LUNDSTEN, JJ.

Opinion

¶ 1 DYKMAN, J.

Margaret L. Jones appeals from an order affirming the Dane County Board (board) which upheld the decision of the Dane County Zoning and Natural Resources Committee (ZNR) to grant a conditional-use permit. She asserts that ZNR failed to meet the requirements of Dane County Ordinances (DCO) §§ 10.255(2)(h) and 10.123(3)(a)1 and that two ZNR members were impermissibly biased. We reverse and remand with directions for ZNR to consider the factors in § 10.123(3)(a)1 and to reconsider § 10.255(2)(h) because of an impermissibly high risk of bias in the prior deliberations.

BACKGROUND

¶ 2 Two residents of Verona applied for a conditional-use permit through their agents, Payne & *492 Dolan, Inc. (P & D) to operate a gravel pit on the their property. ZNR held a lengthy hearing and considered sixty-one conditions before it granted the permit. Minutes from the hearing are the only record of how ZNR reached its decision. Local landowners challenged ****157** ZNR's decision and the board and trial court affirmed. Jones, one of the plaintiffs, appeals. Among other things, she alleges that two ZNR members, Lyman Anderson and Carlton Hamre, impermissibly favored P & D. The bias allegations

derive from the fact that Anderson had leased his property in Oregon, Wisconsin, to P & D to operate a gravel pit. And Hamre had allegedly endorsed the company by co-signing a letter that vouched for the quality of P & D's work. Hamre signed this letter as Town of Vienna chair in November 2001. P & D included the letter in its application to ZNR for a conditional-use permit. After ZNR issued the permit, Hamre made the following comment to a newspaper:

There are some operators I wouldn't support, but I've worked with Payne & Dolan before....

... I'm sorry for the people who will live close to it, but I can't change my mind on voting for the pit.

Although Hamre has since retired, Anderson currently serves as chair of ZNR.

STANDARD OF REVIEW

[1] [2] [3] ¶ 3 We review the board's affirmance of ZNR's decision using the same standard as the trial court. *Delta Biological Res., Inc. v. BOZA*, 160 Wis.2d 905, 910, 467 N.W.2d 164 (Ct.App.1991). While we are not bound by the board's conclusions of law, we will sustain them if reasonable. *Id.* We hesitate to interfere with *493 administrative determinations and presume they are correct and valid. Therefore, we limit our review to:

- (1) Whether the Board kept within its jurisdiction;
- (2) whether it acted according to law;
- (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and
- (4) whether the evidence was such that it might reasonably make the order or determination in question.

Id. (citation omitted).

DISCUSSION

¶ 4 Jones does not seek review of the merits of ZNR's determination. She challenges only whether ZNR (1) considered the requisite agriculture district factors in DCO § 10.123(3)(a)1; (2) made the findings DCO §

10.255(2)(h) requires; and (3) allowed biased members to deliberate and vote. She claims that these failings render ZNR's determination arbitrary, oppressive and unreasonable and contrary to law.

a. Agriculture District Considerations

[4] ¶ 5 The parties do not dispute that Verona has elected to be an exclusive agriculture district pursuant to DCO § 10.123. Section 10.123(3)(a)1¹ requires ZNR to **158 consider ten factors before issuing a conditional-use *494 permit in an agriculture district. Nothing in the hearing minutes refers to these ten factors. Jones asserts that this shows ZNR did not act according to law. We agree. The sparse record contains no mention of the special concerns for an agriculture district. We have no basis to conclude that ZNR considered those factors.

[5] ¶ 6 P & D urges us to presume that the agency considered all the factors the Dane County Ordinances require it to consider. It claims the law presumes the board's decision is valid and correct. "A presumption is a rule of law, statutory or judicial, by which a finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted." *Delta Biological Res., Inc.*, 160 Wis.2d at 912, 467 N.W.2d 164 (citation omitted). We decline to expand the presumption of validity doctrine such that we presume a basic fact. Affording boards such deference would render judicial review meaningless. We conclude that a record devoid of any reference to the *495 agriculture district factors does not satisfy the requirements of DCO § 10.123(3)(a)1.

¶ 7 P & D also argues that Jones has the burden of demonstrating that ZNR's decision was contrary to law or arbitrary, oppressive, or unreasonable. It claims that the only proof Jones has offered is testimony from an unidentified speaker at the board hearing that stated that ZNR did not consider the agriculture district factors.² P & D argues that this testimony is unreliable and not sufficient to overcome the presumption of validity. We do not need to address the reliability of this testimony because the record, or lack thereof, resolves the question of whether ZNR considered the factors in DCO § 10.123(3)(a)1.

¶ 8 P & D contends that ZNR complied with DCO § 10.123(3)(a)1 because it held a lengthy hearing and

considered sixty-one conditions for the conditional use. P & D offers no legal authority to support its position that ZNR may consider use conditions rather than the ten factors in § 10.123(3)(a)1. We reject this argument.

¶ 9 Similarly, the board contends that ZNR considered the factors in DCO § 10.123(3)(a)1 when it found that the conditional-use permit complied with *496 DCO § 10.255(2)(h). Section 10.255(2)(h) requires ZNR to find that the conditional use “conform[s] to all applicable regulations of the district in which it is located.” The board argues that such a finding encompasses the considerations in § 10.123(3)(a)1. This reasoning, however, eviscerates the special consideration that Verona opted for when it became an agriculture district. If ZNR necessarily considers § 10.123(3)(a)1 when it makes the requisite findings for § 10.255(2)(h), then electing to be an agriculture district becomes meaningless. This result contradicts the plain purpose of distinguishing agriculture from other types of districts. We are not persuaded.

¶ 10 Both P & D and the board suggest that if we conclude that ZNR did not **159 consider the requisite factors in DCO § 10.123(3)(a)1, we will be requiring increased formality in ZNR’s deliberations. We disagree. We reverse only because ZNR failed to consider certain factors, not because its considerations lacked formality.

b. Findings of Fact

[6] ¶ 11 Jones also asserts that ZNR only approved the considerations in DCO § 10.255(2)(h) and did not actually make findings as required by the ordinance. Both P & D and the board argue that although ZNR used the term “approve” when it addressed § 10.255(2)(h), its determinations constituted findings. We agree. It is immaterial that ZNR used the word “approve” rather than stating that it was making a finding. ZNR specifically addressed and voted on all the concerns in § 10.255(2)(h). Those deliberations constitute findings.

*497 c. Bias

[7] ¶ 12 Jones claims that two members of ZNR were impermissibly biased. Specifically, she contends Anderson and Hamre were not impartial decisionmakers because of their prior business relationships with P & D. She

argues that Hamre expressed a “personal and close feeling about” P & D’s work in his letter that supported P & D’s application. She also contends that his comments to the press reveal prejudgment of the issues. Accordingly, she claims that all of ZNR’s deliberations were fatally flawed because of bias.

¶ 13 Both P & D and the board argue that Jones’ evidence does not overcome the presumption of honesty and integrity we afford ZNR. They claim that Hamre’s letter simply shows that he was familiar with the quality of P & D’s work, which is the kind of experience and knowledge zoning committees often utilize in deliberations. The board also contends that merely forming an opinion prior to a hearing does not constitute prejudgment under *State ex rel. DeLuca v. Common Council*, 72 Wis.2d 672, 690, 242 N.W.2d 689 (1976).

[8] [9] ¶ 14 To act in accordance with law, a decisionmaker must comport with the “common law concepts of due process and fair play.” *Marris v. City of Cedarburg*, 176 Wis.2d 14, 24, 498 N.W.2d 842 (1993). A decisionmaker violates due process and fair play by harboring bias, or an impermissibly high risk of bias, or prejudging the facts or the application of the law. *Id.* at 25, 498 N.W.2d 842 (citation omitted). The Wisconsin Supreme Court applied this rule in *Marris*, where a board member made several prejudicial statements about a permit applicant, including that he wanted “to get [the applicant] on the Leona Helmsley rule.” *Id.* at 28-30, 498 N.W.2d 842. Those remarks *498 overcame the presumption of honesty and integrity that would ordinarily lie. *Id.* at 30, 498 N.W.2d 842. Accordingly, the court vacated the board’s decision because the bias violated due process.

¶ 15 Hamre became an advocate for P & D when P & D submitted his letter as part of its permit application. He cannot be both an advocate and an impartial decisionmaker on this issue. In the letter, Hamre proclaimed P & D “has always stood out above the rest in their efforts and success in being a good corporate citizen and caretaker of the land.” Hamre’s “close and personal view” promotes P & D’s good track record and recommends them as a good business to operate a gravel pit in the community. This advocacy surpasses merely forming an opinion about a subject and overcomes the presumption of integrity and honesty. We conclude the letter evidences an impermissibly high risk of bias.

****160** ¶ 16 Because the letter evidences an impermissibly high risk of bias, we do not reach the board's claims that the newspaper article Jones references was not part of the record before this appeal or P & D's argument that Hamre's comments after the decision are irrelevant.

[10] ¶ 17 Jones also asserts that Anderson was impermissibly biased in favor of P & D. Although Hamre's impermissibly high risk of bias alone warrants reversal, we will also address Jones' allegations against Anderson because her brief informs us that Anderson still serves as chairman of the ZNR. Therefore, we need to clarify whether Anderson may deliberate and vote in the rehearing.

¶ 18 The parties do not dispute that Anderson had leased his property to P & D for the operation of a ***499** gravel pit. Jones claims that Anderson benefited from "financially assisting his long-term business partner" and "avoiding the appearance of hypocrisy had he denied a gravel pit operation while maintaining one on his own property."

¶ 19 Both P & D and the board maintain that Anderson's lease is unrelated to the conditional-use permit at issue in this case. They also contend that Anderson has an economic interest in not allowing P & D to operate a gravel pit in Verona because it would compete with his own. They argue that Anderson's lease with P & D does not rebut the presumption that Anderson acted with honesty and integrity.

¶ 20 We conclude that Anderson's lease with P & D does not constitute impermissible bias. Unlike the board member in *Marris*, Anderson's lease with P & D does not evidence bias. The lease was an independent, prior business transaction unrelated to the property at issue. *Marris* does not require board members to have no prior dealings with applicants; rather, the court recognized the localized nature of county boards and that members "can be expected to have opinions about local zoning issues." *Id.* at 26, 498 N.W.2d 842. Similarly, members may have conducted business with applicants that appear before them, as in Anderson's case. We conclude the property lease alone does not suffice to meet the standard of *Marris*.

CONCLUSION

¶ 21 We conclude that ZNR complied with DCO § 10.255(2)(h) by making the requisite findings, despite using the term "approve." However, because Hamre's letter evidences an impermissibly high risk of bias and ***500** he participated in making those findings, we reverse with directions for ZNR to reconsider § 10.255(2)(h) without Hamre. We do not preclude Anderson's participation. Likewise, we direct ZNR to consider the factors DCO § 10.123(3)(a)1 requires before issuing a conditional-use permit for the operation of a gravel pit.

Order reversed and cause remanded with directions.

All Citations

269 Wis.2d 488, 676 N.W.2d 154, 2004 WI App 26

Footnotes

1 Dane County Ordinance § 10.123(3)(a)1 provides in pertinent part:

In passing applications for conditional use permits the committee shall consider the following relevant factors:

- a. The statement of purposes of the zoning ordinance and the A-1 District.
- b. The potential for conflict with agricultural use.
- c. The need of the proposed use for a location in an agricultural area.
- d. The availability of alternative locations.
- e. Compatibility with existing or permitted use on adjacent lands.
- f. The productivity of the lands involved.
- g. The location of the proposed use so as to reduce to a minimum the amount of productive agricultural land converted.
- h. The need for public services created by the proposed use.
- i. The availability of adequate public services and the ability of affected local units of government to provide them without an unreasonable burden.
- j. The effect of the proposed use on water or air pollution, soil erosion and rare or irreplaceable natural resources.

- 2 An unidentified member of the ZNR Committee stated the following at a subsequent board meeting:
- They never once addressed the point that the Zoning and Natural Resources Committee, of which I am a member, did not address Section 10.123(3)(A) of the Dane County Code of Ordinances, and within there there is ten different factors....
- ...
- ... We have got to follow our own ordinance and consider those factors. We have got to address those. We can even discuss them. We never discussed them in ZNR. None of those standards or factors were discussed

Exhibit F

Clerk's Process

- Receive Petition Form
 - Verify completeness
 - Not complete, send letter
 - To petitioner via US mail
- Schedule hearing before Sex Offender Residency Board 30 – 45 days (Or without unreasonable delay)
- Agenda
 - Hearing
 - As needed.
 - During regular business hours
 - Location
 - Village Hall
 - Notification to petitioner and Residency Board members
 - Board members
 - Quorum
 - Send notification via email
 - Notice of Hearing to petitioner via US mail
 - Post Agenda in three (3) Village locations
- Prepare Petition packet for each case (each member?)
 - Petition
 - Petition Documentation (supplied by petitioner)
 - Judgment of Conviction
 - Letter from landlord, if rented property
 - Treatment – Certificate of Completion from Counselor
 - Sex Offender Treatment document
 - Additional Documentation
 - Sex Offense
 - Check with PD for other relevant documents
 - Clerk request from PD -- DOC/CCAP/etc.
- Website – SEX OFFENDER INFORMATION
 - Ordinance
 - Petition form
 - Residence Boundary Map
 - Sexual offender Registry Database (search by name and/or area)
- Prepare Decision
 - Written decision (FINDINGS OF FACT/RECORD OF DECISION)
 - Send to Police Lieutenant, Village Administrator
 - Send to Offender w/Affidavit of Mailing
- Minutes
 - Post minutes (Action Minutes)

Exhibit F

- Website
 - Three (3) Village locations
 - Disclose Votes and Decision
- Appeal
 - Monitor for an appeal of Residency Board's decision within 30 days of receipt of the decision.
 - If notice of appeal and required documentation is provided to Village Clerk within 30 days of receipt, proceed with appeal under Village Code Chapter 24.

Sample

Exhibit G

**VILLAGE OF SUSSEX
SEX OFFENDER RESIDENCY BOARD
VILLAGE HALL
N64W23760 Main Street
Sussex, Wisconsin 53089
INSERT DATE**

AGENDA

1. Call to Order
2. Petition Case(s)
 - a. **Call Case/Petition #** _____
Request of _____ [insert name] for an exemption to the Sex Offender Residency Restrictions that would allow him/her to reside at ADDRESS.
 - i. **Closed session.** A portion of this public hearing may convene into closed session pursuant to Wis. Stats. §19.85(1) (f), to consider medical history of alcohol, drug, and sex offender treatment, juvenile conviction records, and other health information. At the conclusion of any such closed session, the Sex Offender Residency Board will reconvene in open session for continuation of the public hearing.
 - ii. **Closed session.** At the conclusion of the hearing, the Sex Offender Residency Board may convene in closed session pursuant to Wis. Stats. §19.85(1)(a) to deliberate concerning the hearing regarding the appeal of _____ [insert name] for an exemption to the Residence restrictions that would allow him/her to reside at [ADDRESS].
 - iii. **Action.** At the conclusion of the closed session, if any, the Sex Offender Residency Board will reconvene in open session for possible further deliberation before making voting and making its decision on the Petition.
3. Adjournment

Posted:

The Village Hall is handicapped accessible. If you have other special needs, please contact the Village Clerk
N64W23760 Main Street, Sussex WI 53089 (262) 246-5200

Exhibit H
VILLAGE OF SUSSEX
SEX OFFENDER RESIDENCY BOARD

PETITION/CASE NO. _____

NAME OF PETITIONER
ADDRESS
CITY, STATE ZIP

FINDINGS OF FACT

The Petitioner appeared in person before the Sex Offender Residency Board hereinafter referred to as “Residency Board” on **INSERT DATE** to provide evidence to support the Petitioner’s Sex Offender Residency Restrictions exemption petition filed with the Village Clerk’s office on **INSERT DATE**.

The Petitioner’s basis for the exemption petition is strictly to request an exemption to the residence restrictions that would allow him/her to reside at: **INSERT ADDRESS** [AND/OR if applicable] to engage in _____ activities. Said address is within a Child Safety Zone within the jurisdictional boundaries of the Village of Sussex pursuant Section 9.09(21)(B)4. And (C)1. of the Village Code.

RECORD OF DECISION

NOW, THEREFORE, based upon the evidence presented in open and closed sessions before the Residency Board on **INSERT DATE**, the Residency Board hereby renders the following decision:

A motion was made, seconded and adopted by majority vote to **GRANT or DENY** the Petitioner’s request for an exemption to the residence [AND/OR if applicable] activity restrictions that would allow him/her to reside at: **INSERT ADDRESS** Said address is within a Child Safety Zone within the jurisdictional boundaries of the Village of Sussex.

Such a decision was made for to the following reasons:

1. This exemption grant is subject to the designated offender maintaining compliance with all terms and conditions of probation and parole. If probation or parole are revoked, that revocation automatically voids this Decision unless the designated offender requests a hearing before the Residency Board within ninety (90) days of the date of revocation and upon such hearing the Residency Board shall consider the circumstances of the revocation along with the factors described in Section 9.09(21)(H)e. of the Village Code as though it were a new petition.
2. This grant is subject to the designated offender complying with all other terms and conditions of Section 9.09(21) of the Village Code. Any conviction for violation of any part of Sections 9.09(21)(C – F) of the Village Code or of any violation that would define the person as a designated offender per Section 9.09(21)(B) of the Village Code shall void this Decision.

3. In the event this Decision is rendered void based upon the foregoing conditions, the designated offender shall have thirty (30) days to come into compliance with the requirements of Sections 9.09(21)(C – F) of the Village Code to the same extent as though this Decision had not been granted.

[Insert other reasonable conditions as applicable]

The Sex Offender Residency Board's decision is final for the purpose of any Appeal.

Dated this _____ day of _____, 20__.

SEX OFFENDER RESIDENCY BOARD

By: _____
Board Member

Sex Offender Residency Board
Village of Sussex
N64W23760 Main Street
Sussex, WI 53089

Sample

Exhibit I
**VILLAGE OF SUSSEX
SEX OFFENDER RESIDENCY BOARD**

PETITION/CASE NO. _____

**NAME OF PETITIONER
ADDRESS
CITY, STATE ZIP**

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing on your Exemption Petition filed with the Village Clerk's office shall be heard before the Village of Sussex's Sex Offender Residency Board as follows:

**PLACE: Village Hall
N64W23760 Main Street
Sussex, WI 53089**

DATE:

TIME:

Your failure to appear will result in the dismissal of your Petition.

Dated this _____ day of _____, 20____.

Village Clerk

Village Clerk
Village of Sussex
N64W23760 Main Street
Sussex, WI 53089
(262) 246-5200

The Village Hall is handicapped accessible. If you have other special needs, please contact the Village Clerk
N64W23760 Main Street, Sussex, WI 53089 (262) 246-5200

Exhibit J

PETITIONER NAME
ADDRESS
CITY, STATE ZIP

Re: Sex Offender Residency Board

Dear NAME:

We have received your Petition for permission to reside at **INSERT ADDRESS** in the Village of Sussex. NOTE that you **DO NOT HAVE PERMISSION** to reside at this residence at this time.

A hearing will be scheduled only after you have provided this office with: (1) A letter from the new landlord which shows willingness to rent to you and acknowledges you are a sex offender (if renting); (2) a copy of the Criminal Complaint and Judgment of Conviction for your sex offense(s); (3) a copy of the police reports investigating the sex offense(s); (4) documentation verifying the status of any Sex Offender Treatment or other mental health counseling; and (5) a list of your attempts to find housing that would not require an exemption from the Village.

Enclosed is a copy of the Village's Ordinance Chapter 9.09. The Sex Offender Residency Board shall consider the public interest as well as the affected party's presentation and concerns before making its decision. In making its decision under this provision, the Sex Offender Residency Board may consider any or all factors as contained in this section that may be applicable to your request. The Sex Offender Residency Board will then make its determination.

Please feel free to contact the Clerk's office if you have any questions.

Sincerely,

Village Clerk

/

Enclosure

cc: DOC Probation & Parole (if agent involved)
PD Lt. (if PD involved)

Exhibit K
VILLAGE OF SUSSEX
SEX OFFENDER RESIDENCY BOARD

PETITION/CASE NO. _____

NAME OF PETITIONER

AFFIDAVIT OF POSTING

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

I, **CLERK**, the Clerk/Deputy Clerk for the Village of Sussex, do hereby certify that on **INSERT DATE**, I posted **NAME OF DOCUMENT** a true and correct copy of which is attached hereto and made a part hereof in the following three (3) public places:

Village Hall, N64W23760 Main Street, Sussex, Wisconsin 53089

Public place 2

Public place 3

Dated this _____ day of _____, 20_____.

Clerk

Subscribed and Sworn to before me
this ____ day of _____, 20_____.

(Print Name)
Notary Public, Waukesha County, WI
My Commission expires:

Exhibit L
**VILLAGE OF SUSSEX
SEX OFFENDER RESIDENCY BOARD**

PETITION/ CASE NO. _____

NAME OF PETITIONER

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

The undersigned affiant, being first duly sworn on oath, deposes and states that she mailed a true copy of the **NAME OF DOCUMENT** to the person(s) and at the address(es) hereinafter stated, by enclosing the same in an envelope which was postpaid for certified mail first class handling, which bore the sender's return address of N64W23760 Main Street, Sussex, WI 53089 and which affiant mailed at Sussex, Wisconsin, on the ____ day of _____, 20__.

Address name and address

TO:

Clerk

Subscribed and Sworn to before me
this ____ day of _____, 20__.

(Print Name)
Notary Public, Waukesha County, WI
My Commission expires: