

Current Issues in Land Use Regulation

PRESENTED BY
BRIAN OHM, J.D.
DEPARTMENT OF PLANNING & LANDSCAPE
ARCHITECTURE AND
DIVISION OF EXTENSION
UNIVERSITY OF WISCONSIN-MADISON

1

Presentation Overview

- New Requirements for Conditional Use Permits (CUPs) under 2017 Wis. Act 67
- Complying with the Housing Reporting Requirements under 2017 Wis. Act 243

2



New Requirements for Conditional Use Permits (CUPs) under 2017 Wis. Act 67

3

CUPs – Historical Context



- **1926 Standard State Zoning Enabling Act**
 - Foundation for Wisconsin’s zoning laws
 - Granted authority to local legislative body to divide the local government’s territory into districts
 - Within districts, permitted uses allowed as a matter of right
 - Act gave board of appeals/adjustment authority to decide “special exceptions”
 - × Courts interpret “special exceptions” to include conditional uses
 - × Wisconsin law amended in 1973 to include authority for plan commissions (or the governing body) to also decide CUPs
 - × Other case law develops governing conditional uses
 - × Many variations in local CUP practice

4

CUPs – Historical Context

- *AllEnergy Corp. v. Trempealeau County*, 2017 WI 52
 - Frac sand mine
 - County voted to adopt 37 conditions for the mine
 - *AllEnergy* agreed to the conditions
 - County voted to deny CUP
 - Wis. Supreme Court upheld denial

5

2017 Wis. Act 67 - CUPs

- If an applicant for a CUP meets or agrees to meet all of the requirements and conditions specified in the ordinance or those imposed by the zoning board, the local government shall grant the CUP

6

2017 Wis. Act 67 - CUPs

- Requirements and conditions must be reasonable and, to the extent practicable, measurable.
- Any condition imposed must relate to the purpose of the ordinance

7

2017 Wis. Act 67 - CUPs

- Applies the “substantial evidence” standard to applicant and the decision maker
 - “facts and information other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a CUP and that reasonable persons would accept in support of a conclusion.”

8

2017 Wis. Act 67 - CUPs

- What is meant by “substantial evidence”?
 - less than a preponderance of the evidence but more than “a mere scintilla” of evidence and more than “conjecture and speculation”
 - mere uncorroborated hearsay does not constitute substantial evidence
 - evidence of such convincing power that reasonable persons could reach the same decision as the local governmental entity, even if there is substantial evidence to support the opposite decision

9

2017 Wis. Act 67 - CUPs

- Applies to more than CUPs
 - CUPs, special exceptions, other special zoning permission (not a variance)
- Should it be a conditional use?
- Importance of purpose statements for zoning districts
 - Does comprehensive plan provide any guidance?

10

Comprehensive Planning

- 2015 Wis. Act 391
 - Clarifies that state law does not require that the issuance of a CUP does not need to be consistent with the local comp. plan
 - Comp. plan is still relevant when reviewing CUPs

11

Anatomy of a CUP Ordinance

- Application process
- Approval process
- Requirements/conditions specified in the ordinance
 - General standards
 - Specific standards
- Requirements/conditions imposed by the board
- Duration, transfer, renewal
- Compliance
- Judicial review

12

Recent Case Law

- *Eco-Site, LLC v. Town of Cedarburg*, 2019 WI App 42
 - “there is no presumption that a ‘conditional use is ipso facto consistent with the public interest or that a conditional use is a use as of right at a particular site within an area zoned to permit that conditional use.”
 - Property owners can give an opinion as to the value of the property they own.

13

Complying with the Housing Reporting Requirements under 2017 Wis. Act 243

14

2017 Wis. Act 243

- Requires cities and villages with 10,000 people or more to prepare 2 reports by 1/1/2020:
 - New Housing Fee Report
 - ✦ Wis. Stat. 66.10014
 - Housing Affordability Report
 - ✦ Wis. Stat. 66.10013

15

New Housing Fee Report

- The report must list the amount of any of the following fees imposed on new residential construction, remodeling, or development:
 - Building permit fee
 - Impact fee
 - Park fee
 - Land dedication requirement
 - Fee in lieu of land dedication
 - Plat approval fee
 - Stormwater management fee
 - Water or sewer hook-up fee

16

New Housing Fee Report

- The report must also:
 - Add the amount of any of the above fees imposed in the prior year and state the total amount (the sum)
 - Divide the total amount of fees imposed by the number of new residential dwelling units approved in the prior year and state the amount (the quotient)

17

New Housing Fee Report

- Report must be posted on city/village website
 - On a webpage dedicated solely to the report and titled “New Housing Fee Report”
 - If city/village does not have a website, it must be posted on the county’s website
- If report not posted on website, the city/village cannot charge the fee
- City/village must provide a copy of the report to each member of the governing body

18

Housing Affordability Report

- A report on the city/village's implementation of the housing element in the comprehensive plan

19

Housing Element

Wisconsin's 1999 Comprehensive Planning Law, Wis. Stat 66.1001(2)(b)

- A compilation of objectives, policies, goals, maps and programs of the local governmental unit to provide an adequate housing supply that meets existing and forecasted housing demand in the local governmental unit.
 - The element shall assess the age, structural, value and occupancy characteristics of the local governmental unit's housing stock.
 - The element shall also identify:
 - ✦ specific policies and programs that promote the development of housing for residents of the local governmental unit and provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs,
 - ✦ policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and
 - ✦ policies and programs to maintain or rehabilitate the local governmental unit's existing housing stock.

20

Comp. Planning Resources

- *Housing Wisconsin: A Guide to Preparing the Housing Element of a Local Comprehensive Plan* (2nd Edition, 2003)
 - Housing needs assessment
 - doa.wi.gov/DIR/Comp_Planning_housing_guide_2.pdf

21

Housing Affordability Report

- The report shall contain:
 - (a) The number of subdivision plats, certified survey maps, condominium plats, and building permit applications approved in the prior year.
 - (b) The total number of new residential dwelling units proposed in all subdivision plats, certified survey maps, condominium plats, and building permit applications that were approved by the municipality in the prior year.

22

Housing Affordability Report

- (c) A list and map of undeveloped parcels in the municipality that are zoned for residential development.
- (d) A list of all undeveloped parcels in the municipality that are suitable for, but not zoned for, residential development, including vacant sites and sites that have potential for redevelopment, and a description of the zoning requirements and availability of public facilities and services for each property.

23

Housing Affordability Report

- (e) An analysis of the municipality's residential development regulations, such as land use controls, site improvement requirements, fees and land dedication requirements, and permit procedures. The analysis shall calculate the financial impact that each regulation has on the cost of each new subdivision. The analysis shall identify ways in which the municipality can modify its construction and development regulations, lot sizes, approval processes, and related fees to do each of the following:
 - ✦ 1. Meet existing and forecasted housing demand.
 - ✦ 2. Reduce the time and cost necessary to approve and develop a new residential subdivision in the municipality by 20 percent.

24

Housing Affordability Report

- The report must be updated annually
- The report must be posted on the city/village website on a page dedicated solely to the report and titled “Housing Affordability Analysis”

25

Issues

- Who prepares report?
- Process?
- Relationship of the Housing Affordability Report to the city/village comprehensive plan?
- No penalties for non-compliance

26

Comments/Questions?



CONTACT INFORMATION

bwohm@wisc.edu
dpla.wisc.edu/staff/brian-w-ohm/