

# CONDITIONAL USE ADMINISTRATION

A New Paradigm

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**Who are we?**

- Twitter: @JRHEALY & @RichfieldWis
- Past Work: Legislative Aid for State Rep. Patricia Strachota & County Exec. Scott Walker

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**Who are we?**

- Municipal Law and Litigation Group, S.C.
- T: (262)-548-1340
- E: [Jmacy@ammr.net](mailto:Jmacy@ammr.net)
- Specializing in municipal law for close to 40 years

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**WISCONSIN**  
1848

**WHAT WE HOPE TO ACCOMPLISH...**

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**YES NO MAYBE™**

**POST EUCLIDEAN ZONING**

- The power of "Maybe" and the rise of municipal discretion post WWII
- Greater flexibility for municipalities to consider various uses on a case-by-case basis

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**AllEnergy Corp. v. Trempealeau County Environment and Land Use Committee**

- AllEnergy sought a CUP for "Nonmetallic mineral mining"
  - Hundreds showed up in opposition
- Two issues came before the State Supreme Court:
  - AllEnergy contended the opponent's arguments were insufficient, because they were all "uncorroborated hearsay".
  - The Zoning Committee denied the application even though they found that all the requirements for the CUP were met.




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**Decisions, decisions, decisions...**

- Court sided WITH Trempealeau County that the CUP could be denied
- The "substantial opposition" was adequate reasoning for denial
- Logic and reasoning of the Court was consistent with precedent and "home rule" philosophy

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State of Wisconsin



2017 Assembly Bill 479      Date of enactment: November 27, 2017  
 Date of publication: November 28, 2017

**2017 WISCONSIN ACT 67**

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**MUNICIPAL PREEMPTIONS**

Applies to all Special Zoning Permission

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a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.

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MUNICIPAL  
PREEMPTIONS

Substantial Evidence

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b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

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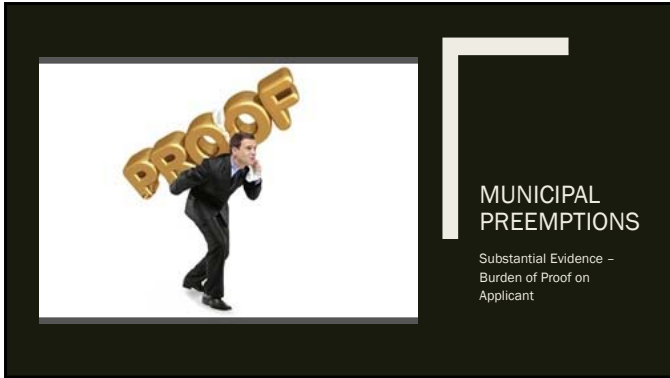
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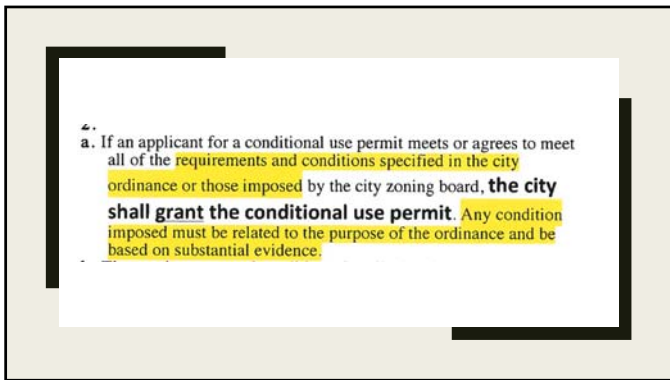
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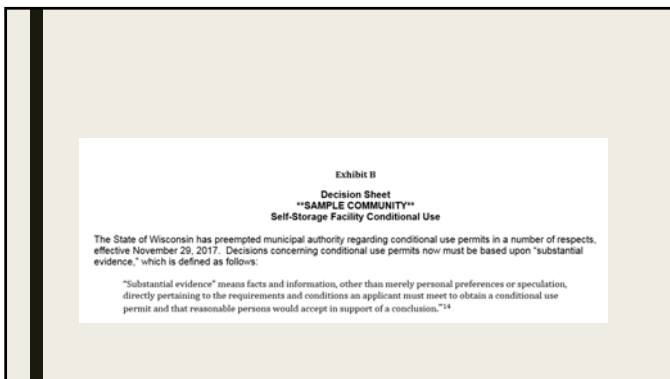
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Criteria	Applicant Provided Substantial Evidence <sup>11</sup>		Opponents Provided Substantial Evidence <sup>12</sup>		PC finds Standard is met <sup>13</sup>	
	Yes	No	Yes	No	Yes	No
<b>Section 4.01 C, SAMPLE COMMUNITY Zoning Ordinance Standard:</b>						
"The SAMPLE COMMUNITY Zoning Ordinance may authorize the issuance of a Conditional Use Permit for the proposed use when: (a) the proposed use is not otherwise prohibited for such conditional uses and otherwise acts in accordance with the purpose and intent of the ordinance and does not result in an excessive number, location, or otherwise adverse to the environment of the same as the residential use in the neighborhood."						
<b>Also, per Section 4.04 A, of the SAMPLE COMMUNITY Zoning Ordinance:</b>						
"The Plan Commission shall evaluate the effect of the proposed use upon:						
1. The maintenance of safe and health conditions;						
2. Traffic congestion, drainage, and related to related properties;						
3. The appearance of the site and use with other properties;						
4. Existing and proposed both pedestrian and to vehicle access to the site;						
5. The adequacy of existing and proposed parking areas and associated facilities;						
6. The adequacy of existing and proposed public services."						
If Plan Commission answers "no" to the last of the questions, above, the CU permit must be denied. Otherwise, proceed to the next question.						

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Criteria	Applicant Provided Substantial Evidence <sup>11</sup>		Opponents Provided Substantial Evidence <sup>12</sup>		PC finds Standard is met <sup>13</sup>	
	Yes	No	Yes	No	Yes	No
<b>Section 4.01 E, SAMPLE COMMUNITY Zoning Ordinance Standard:</b>						
"Locations, self storage facilities should be located on sites which have no potential characteristics which may be adverse to surrounding higher quality land uses. To accomplish this objective, the Planning Commission shall review each request and make a finding that none of the following criteria are met before any such use is approved:"						
1. Located on sites of other "higher quality development opportunities;"						
2. Lack of existing or future parking areas or public transit service;						
3. Near and conditions not conducive to supporting urban settings such as low building heights, or high ground-water, or contaminated soils;						
4. Poor ability from adjacent or nearby residential;						
5. Poor vehicle access to adjacent roadway;						
6. High traffic volume in other adverse environmental conditions;						
7. Sites where such uses would be an appropriate buffer or transition between different land uses."						
If the Plan Commission finds that fewer than two of the criteria described above are met, the conditional use permit must be denied. If the Plan Commission finds that two or more of the criteria are met, proceed to the next question.						

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Criteria	Applicant Provided Substantial Evidence <sup>11</sup>		Opponents Provided Substantial Evidence <sup>12</sup>		PC finds Standard is met <sup>13</sup>	
	Yes	No	Yes	No	Yes	No
<b>Section 4.04 C., SAMPLE COMMUNITY Zoning Ordinance Standard:</b>						
"Compliance with all other provisions of the ordinance, such as lot width and area, yards, height, parking, loading, traffic, and highway access shall be required of all conditional uses."						
If Plan Commission answers "no" to the last of the questions, above, the CU permit must be denied. Otherwise, proceed to the conditions of approval.						

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MUNICIPAL PREEMPTIONS  
"REASONABLE" CONDITIONS

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

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**Approval Conditions.**

Section 2.04B of the SAMPLE COMMUNITY Zoning Code states the following regarding conditions that may be imposed by the Plan Commission:

"Conditions may be reasonably determined upon: type of operation; hours/days; advertising; proximity of structure; construction materials; and construction safety, including, but not limited to, safety, lighting, parking, access, maintenance, etc. Hours of operation, signage, etc., shall comply with applicable codes and regulations. The applicant shall be responsible for obtaining all necessary permits and approvals for the use of the facility."

Section 2.04C, regarding on-site storage facilities, states as follows:

"IN ORDER TO CONSIDER in the process of reviewing a request for on-site storage facilities, approval conditions may be imposed by the Planning Commission. Such conditions may include, but are not limited to, the following: on-site storage facilities, or structures, equipment, and signs, which are not in compliance with applicable codes and regulations."

a. Are the conditions proposed by the SAMPLE COMMUNITY Planner related to the purpose of the ordinance and based on substantial evidence?

YES  NO

If the answer is "no", conditions that fail this test must be removed or revised to satisfy the test.

b. Are the conditions proposed by the SAMPLE COMMUNITY Planner reasonable and to the extent practicable, measurable?

YES  NO

If the answer is "no", conditions that fail this test must be removed or revised to satisfy the test.

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Has the applicant agreed to meet all of the requirements and conditions specified by the SAMPLE COMMUNITY Plan Commission?

YES  NO

If the Plan Commission answer is "yes" proceed to the next section. If the Plan Commission answer is "no" the conditional use must be denied.

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**NOTICE OF PUBLIC HEARING**

Municipal Preemption

- All CUPs require a Public Hearing
- Class II Public Hearing Notice

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3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.

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**MUNICIPAL  
PREEMPTION**

Quasi-Judicial Decision  
to  
Approve or Deny

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5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

**LEGISLATION DECISION TO  
JUDICIAL DECISION**

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**Proposed motions:**

A. **Motion to Approve:** I move to grant the conditional use order for self-storage facilities in the form presented by the SAMPLE COMMUNITY Planner, subject to the following. [Mark all that apply.]

- The conditions stated within the conditional use order shall be modified in the manner described in the SAMPLE COMMUNITY Plan Commission's discussion.
- The SAMPLE COMMUNITY Attorney (alternatively \_\_\_\_\_) is directed to modify the draft conditional use order and place it in final form consistent with the discussion of the SAMPLE COMMUNITY Plan Commission.
- The modified conditional use order shall be circulated to the members of the Plan Commission who will confirm in writing whether they find the final form to be as decided by the Plan Commission, and if there is any doubt in the mind of any member of the Plan Commission in that regard, the matter shall be brought back to a subsequent Plan Commission meeting for further consideration of the final form of the conditional use order.
- This matter shall be placed upon an upcoming agenda to consider the final form of the conditional use order, and for final action in the matter.

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**B. Motion to Deny:** I move to deny the conditional use application as the applicant has failed to show by substantial evidence that the applicant meets or agrees to meet all of the requirements and conditions specified in the SAMPLE COMMUNITY Zoning Ordinance or those imposed by the SAMPLE COMMUNITY Plan Commission, and substantial evidence in the matter supports the decision to deny, subject to the following: [Mark all that apply.]

- The SAMPLE COMMUNITY Attorney (alternatively: \_\_\_\_\_) is directed to draft a written decision for denial and place it in final form consistent with the discussion of the SAMPLE COMMUNITY Plan Commission.
- The written decision shall be circulated to the members of the Plan Commission who will confirm in writing whether they find the final form to be as decided by the Plan Commission, and if there is any doubt in the mind of any member of the Plan Commission in that regard, the matter shall be brought back to a subsequent Plan Commission meeting for further consideration of the final form of the written denial.
- This matter shall be placed upon an upcoming agenda to consider the final form of the written denial, and for final action in the matter.

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**Recommendations**




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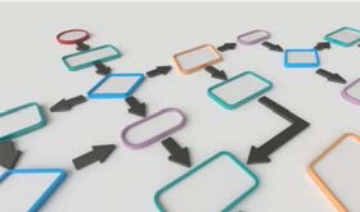
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**Refine Your Application Process**



- Testimony on Conditions
- Due Process
- Focus on the Issues

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### Code Amendments

- Potential conflicts with new law
- Stop gap – repealing conditional uses
- Reclassification of "Uses"
- Specific CU Standards
- Special Exceptions
- Notice Requirements
- Consider Standardized Conditions
- General CU Standards




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### Code Amendments

- Two-step process to One-step process
- Clarify appeals provisions – BZA or Circuit Court?




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### Questions of Law...



- Can municipalities expand variance authority?
- Site, Building and Plan of Operation Approval still viable?
- Liability and litigation – 42 U.S.C.A. Section 1983

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Any Questions?



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