

Midwest Environmental
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**KNOW YOUR RIGHTS:
ANNEXATION AND ZONING DECISIONS**

A Guide to the Land Use Decisions that Affect Big-Box Development

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Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air, clean water and clean government.

ANNEXATION AND ZONING
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BIG BOX OVERVIEW

I. INTRODUCTION

Most community goals, whether it is a stable economy, clean environment, or enriched culture, have a common connection—sustainable or “smart” growth. Our community’s future economic, environmental, and social health depends on the annexation, zoning, and development decisions we make today. To maintain existing commercial districts, we must zone land in a way that promotes infill development. To protect the quality of our air and water, we must plan cities to reduce our reliance on car travel and avoid sprawling parking lots. To maintain a healthy way-of-life, we must use zoning powers to create parks, walkable commercial districts, and convenient neighborhood services.

However, despite the connection to these larger goals, the importance of smart growth is often overlooked. Too often, we assume that all growth is equal and look for quick development rather than smart development. While we appreciate older downtown areas and traditional neighborhoods, many of our communities have slowly abandoned the principles that built these areas.

Big-box retail development represents the clearest, and most alarming, example of our shift away from smart growth principles. Instead of designing cities to conserve resources, create economic centers, and promote civic enrichment and community interaction, many Wisconsin residents are spending their days in cars and large parking lots on the outside of their downtown area.

In design and function, big-box retail can accelerate urban sprawl and magnify its impact on our communities.

Accelerated Urban Sprawl

The trend toward big-box retail removes our connection to compact, well-designed commercial areas. For decades, retailers designed buildings to fit commercial districts and cities added to these districts as population increased. In addition to these compact downtown areas, neighborhoods used to be designed to include small markets and commercial districts to fill residents’ daily needs without traveling across town.

However, by accepting one-story big-box developments, ranging from 20-40 acres in size, we have shifted our community focus from preserving commercial districts to creating individual stores, regardless of the location. Given the sprawling design of big-box retail, communities are now taking once open space and making it a primary focus for commercial traffic. As the commercial centers and traffic shifts to these rural areas, residents lose connection with downtown commercial districts and migrate to rural subdivisions.

To support this style of commercial growth, Wisconsin cities are expanding at a rate **three times faster** than the population growth rate. As a result, residents drive longer distances each year to

shop and many communities see little value in the multi-level, pedestrian-friendly store designs or shared parking structures that built our traditional commercial districts.

Environmental Consequences

As a result of accelerated big-box sprawl, many communities are facing greater threats to public health and their environment. Each year, as we spread out, we are forced to spend more time in the car, and drive farther distances.ⁱ Our increased reliance on cars increases air pollution, which contributes to local health problems and global warming trends.ⁱⁱ Sadly, ten counties in Wisconsin already exceed EPA levels for ozone, a by-product of car emissionsⁱⁱⁱ, and across the U.S., annual doctor visits for asthma-related illness has more than doubled since 1980.^{iv}

On site, big-box developments trap and pollute rainwater that would otherwise replenish our depleting groundwater supplies. The single-level design and sprawling surface level parking lot generally create over 20-30 acres of pavement, causing 16 times more polluted runoff than the farm fields they replace.^v After collecting pollutants from the parking lot, this warm, polluted water is collected and sent to nearby waterways. Polluted stormwater runoff is a leading cause of water pollution in Wisconsin and is degrading or threatening an estimated 40% of our streams and 90% of our inland lakes.^{vi}

Wasting Tax Dollars

Big-box developments often create a greater strain on a community's budget than the multi-level commercial stores that used to fill downtown areas. Instead of building infrastructure and supplying services in a compact commercial district, communities are now extending community services to disjointed developments in rural areas. The financial costs of salting access roads and parking lots, or sending police, fire, and other city services dramatically reduces the tax revenue that is generated.^{vii} Additionally, the financial strain placed on existing businesses that anchor neighborhood commercial districts decreases the tax revenue and employment that big-box retailers advertise.

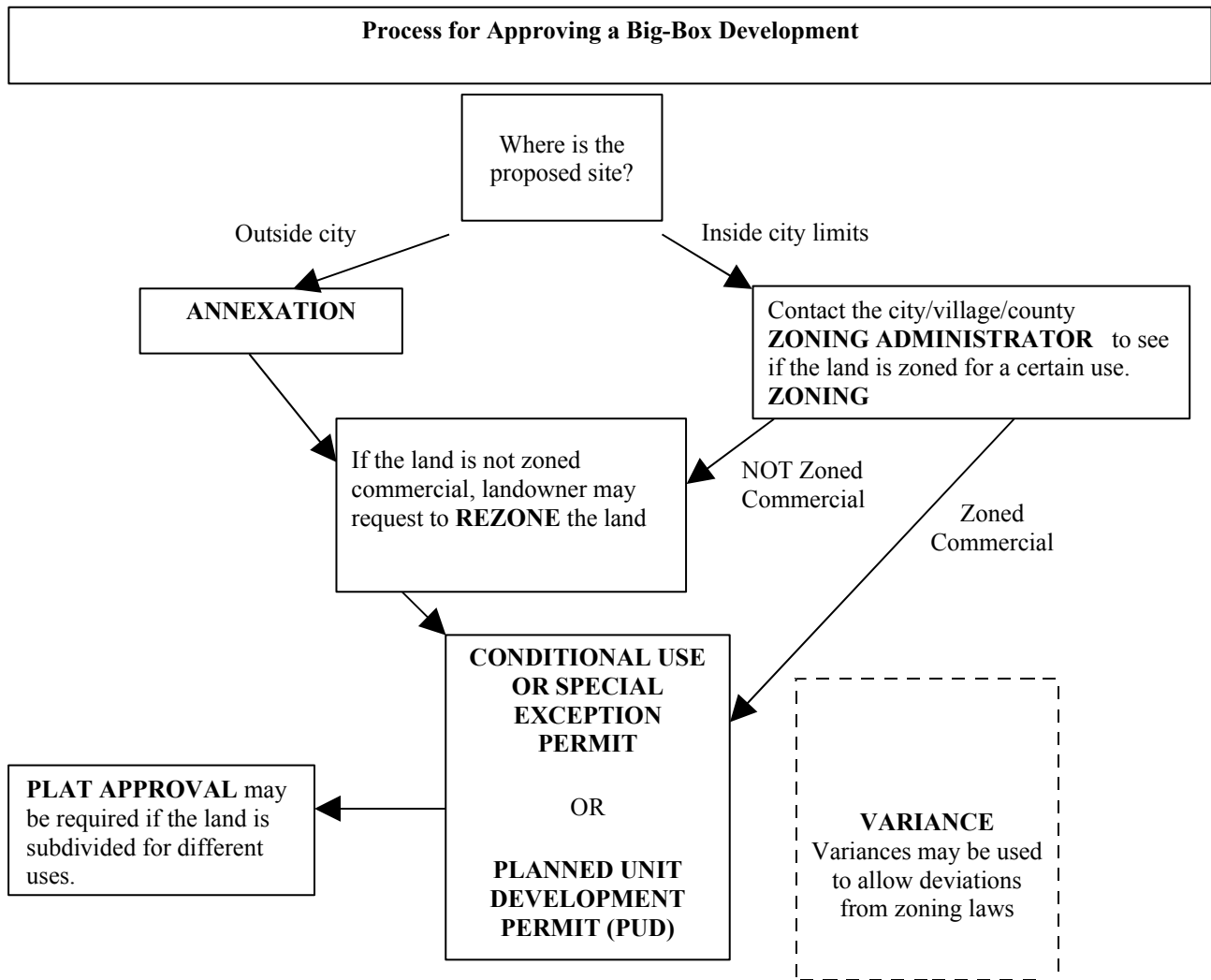
Bring Your Community Back to Smart Growth

These environmental and social impacts are unnecessary. Big-box developments grossly exceed the needs of most communities.^{viii} Americans currently have four times as much retail space *per person* than we did in 1980, and yet commercial buildings are getting larger.^{ix} Even if the large size was necessary, the one-level design is not. Wal-Mart[®] and other retailers have shown the ability to use underground parking, multi-level designs, and other design techniques to decrease their retail footprint.^x Yet, the vast majority of communities continue to allow developments to use the old, inefficient model.

Communities can avoid these impacts by promoting smart growth planning and responsible annexation and zoning decisions. Local officials can zone land to promote neighborhood supermarkets, multi-level retail stores, and parking structures to meet our growing needs, instead of unnecessarily annexing and rezoning farm land for larger and larger retail developments.

This tool-kit opens the door to the local decisions that create big-box sprawl. Local governments have a legal obligation to use zoning powers to protect the public.^{xi} The continued big-box expansion, despite known negative public health, environmental, economic and social impacts, suggests that many local officials are ignoring this obligation. By taking time to understand the decision-making process, you can get involved in these decisions and make sure that your local officials are meeting their legal obligations to promote sustainable growth.

II. GENERAL OVERVIEW



- **TIP: In addition to the local approvals, big-box retailers generally need state approval of stormwater permits and other environmental permits. Check MEA's [Stormwater Tool-kit](#) or [contact MEA](#) for more information.**

HOW CAN I GET INVOLVED IN LAND USE DECISIONS?

III. IDENTIFYING THE “GOVERNING BODY”

Before community members can get involved in land use planning, they need to know *who* is responsible for *what* decisions. The body of government that controls the decision, or the “governing body” will change depending on the decision.

Governing Councils or Boards

In this tool-kit, we refer to the set of elected representatives, such as alderpeople, council members or board trustees, as the “governing council or board.” In cities, the governing body is referred to as the “Common Council” or “City Council.”^{xii} In villages, the governing body is the “Village Board.”^{xiii} In counties, the governing body is the “County Board of Supervisors” or “County Board.”^{xiv}

Like any legislature, the governing council or board has the authority to *make* and *change* the laws. Whenever a land use decision involves the creation or modification of an ordinance or new set of municipal boundaries, the governing council or board has authority. Annexation, zoning and rezoning, and moratoria on land uses all require a change in the community’s ordinances, and therefore fall within the council or board’s powers.

Plan Commission

While the governing body controls rezoning and annexation decisions, most counties, cities, and villages have created a “Plan Commission.”^{xv} Plan Commission members are not generally elected and serve as advisors to the governing body on planning issues. More importantly, the Plan Commission is given the authority to review and approve or deny individual zoning permit applications. To be clear, the “governing council or board” has the power to *create* zoning regulations; Planning Commissions generally have the power to *apply* these ordinances^{xvi}. Both bodies are important at different stages in the process.

- **TIP:** As you move forward, make sure you understand which body is making the final decision. When in doubt, send letters and calls to both the governing body and the Plan Commission.

IV. EARLY PLANNING IS THE BEST SOLUTION!

The easiest way to deter big-box development is to be proactive. Address your land use concerns before the heat of big-box development is at your door. When a community calmly assesses its plans for future growth, it is more likely to avoid sprawling developments on the edge of the city. Here are some ideas:

A. Strengthen Your Comprehensive Plan and Require All Land Use Decisions to Comply with the Plan's Goals

Planning is the key to sustainable growth. Recognizing the importance of planned growth, Wisconsin law requires all county/city/village zoning amendments, proposed after January 1, 2010, to comply with a local comprehensive plan.^{xvii} Many communities have already developed comprehensive plans in anticipation of this deadline. However, until January 1, 2010, these plans are considered “advisory” unless your local zoning code requires compliance with the plan.

If your community has not adopted a comprehensive plan, you can organize residents, contact your representatives, and get started. Comprehensive planning requires public participation and should involve a wide-range of view regarding the community's needs.^{xviii}

If a plan exists, you should take a look at your local zoning code, available either on-line or through a visit to your county/village/city clerk and make sure that zoning and development decisions are required to comply with the plan. To add such a requirement, you can organize residents and file a petition with your council members asking them to amend the zoning ordinances to require compliance with the goals of the comprehensive plan. While the petition will not bind the governing body to respond, the political pressure can convince them that this issue is important.

Finally, make sure that the plan strengthens the community over time. Ask your council members to promote key features of sustainable growth by securing open green spaces, encouraging infill development, and discouraging sprawling developments that directly compete with downtown commercial districts.^{xix} Most cities can freeze the current zoning in the city and unincorporated areas up to three miles outside of the city limits while the comprehensive plan is under construction.^{xx} Smaller cities and villages can freeze zoning up to 1 ½ miles outside the incorporated limit. Ask your representatives to take these steps to give them time to think -- How do we want to grow as a community?

B. Pass a Big-Box Ordinance with Size Caps and Impact Studies

Beyond comprehensive planning, it is important to set clear zoning standards before the next big-box development proposal reaches your community. “Big-box ordinances” are local zoning ordinances that specifically address large-scale commercial buildings. These ordinances can address design, location, and other aspects of big-box development that concern residents. (See MEA's Big-Box Ordinance and Conditional Use Tool-Kit).

In addition to design requirements, well-constructed big-box ordinances set clear limits, such as footprint caps, square footage caps, or other limits on impervious (paved) area. Zoning ordinances can and should recognize that some proposed designs are simply too big for the community's commercial district and/or exceed the community's market demand. Like design requirements, size caps steer proposals to fit the community.

Finally, big-box ordinances can secure educated decisions. Before a governing body can reach a well-informed decision about commercial growth, it needs to take a look at the costs and benefits of different designs, sizes, and locations of retail developments. Ordinances can require impact studies that supply the governing body with the information they need to reach a reasoned decision.

The process for proposing a big-box ordinance is as follows:

- ➔ **Step 1:** Gather existing studies that address the impacts of big-box development on the environment, economy, traffic, and community. Present this information to your governing body and community to support your view that impacts need to be studied in your community.
- ➔ **Step 2:** Use a draft big-box ordinance (with a size cap and impact studies) as a model. Ask a governing Council or Board member to put a big-box ordinance on the agenda for a future meeting.
- ➔ **Step 3:** Regardless of their response, gather support for the ordinance. One way to do this is to circulate a [petition](#) that outlines the request. While a petition cannot force the governing body to adopt an ordinance, it can highlight the community's support for clear limits on development size and location. Include a letter to the council that outlines the effects of big-box development, the steps being taken by other communities to address these effects, and the local desire to protect your community from these sprawling developments.^{xxi}
- ➔ **Step 4:** Once the ordinance is on the agenda, it will be discussed by the governing Council or Board. The governing Council or Board may set up a public hearing. Call your local clerk or check on-line for notice requirements (See [Open Meetings Tool-Kit](#)). Keep an eye out for public hearings and let others know when a meeting is scheduled. Regardless of the public hearing, you can make your voice heard through a letter campaign.
- ➔ **Step 5:** Ordinance proposals are often referred to the Plan Commission for a recommendation and/or amendments. Plan Commission meetings are open to the public and provide a great forum for discussing necessary features of the proposed ordinance. After the review, the Plan Commission sends the proposal back to the governing Council or Board.
- ➔ **Step 6:** The governing Council or Board votes to adopt, reject, amend, or refer the proposal back to the Plan Commission for more guidance.

Again, MEA's [Big-Box Ordinance Tool-kit](#) provides specific elements that should be included in a big-box ordinance.

C. Establish a Green Belt/Urban Growth Boundary

Finally, through their extraterritorial zoning power, cities have the option of creating a "green belt," which limits development in areas that surround the city limits. To establish permanent open space, the city must gain approval from a joint committee of city and town representatives from each affected town.^{xxii} If approved by a joint committee of town and city representatives, most cities (First, Second and Third-class cities; or, cities larger than 10,000 people)^{xxiii} can re-zone an area that extends 3 miles beyond city limits to conserve open spaces (conservation district) and focus commercial growth downtown. Fourth class cities and villages can re-zone up to 1½ miles beyond corporate limits.^{xxiv} Again, a city may "freeze" current zoning (often

agricultural) for up to two years while the city has time to decide whether to change the current zoning.^{xxv} This “freeze” can help cool down big-box pressure.

V. ANNEXATION

If a proposed site for big-box development is outside of the city limits, the landowner may contact the city to annex the property into the city. If annexed, the property would have access to city sewer, water, and public services. The annexation decision is often a vital first step towards big-box development.

A. Annexation Background

City/Village authority to annex land from Towns/Counties is found in Chapter 66 of the Wisconsin Statutes.^{xxvi} Sections 66.0217-66.0221, Wis. Stat., outline five possible ways for land to be annexed.

- 1) Direct Annexation by unanimous approval^{xxvii}
 - The petition to annex property must be signed by all landowners (and electors) on the proposed parcel.
 - The petition must meet all signature and timing requirements in Wis. Stat. § 66.0217(5).
 - The City Council/Village Board must approve the petition by a 2/3 vote.
 - The petitioner(s) must mail a copy of the map to the governing body in charge of annexation decision as explained in Wis. Stat § 66.0217(6).
- 2) Direct Annexation by ½ approval or Annexation by petition^{xxviii}
 - The petition must meet specific requirements regarding number and type of signatures. The main idea is that the annexation can go forward even if *some* of the property owners object.
 - Requires class 1 notice and meeting specific requirements set forth in Wis. Stat, § 66.0217(4),(5).

➤ **TIP:** If the annexed area includes multiple landowners, contact individual landowners within the annexed area and ask them to oppose the annexation. Opposition from affected landowners can significantly affect the City Council/Village Board's treatment of the proposal.
- 3) Annexation by referendum^{xxix}
 - If at least 20% of voters in the last gubernatorial race and 50% of the land owners in the proposed area of annexation sign a referendum petition, then the referendum deciding whether to annex or not will go to the voters. The referendum procedures are described further in Wis. Stat. § 66.0217(7).
 - Requires class 1 notice and meet specific requirements set forth in Wis. Stat. § 66.0217(4),(5).

4) City/Village initiated referendum^{xxx}

5) Town island annexation^{xxxi}

B. Counties with Greater Than 50,000 People Need Department of Administration Review

If the annexation takes place in a county with more than 50,000 people, the annexation proposal must undergo Department of Administration (DOA) review. DOA, along with all municipalities that are affected, should receive notice of the proposal within 5 days of its publication (public notice). The Department reviews the plans and within 20 days decides whether the annexation is “in the public interest or against the public interest.”^{xxxii}

However, do not rely too heavily on this review. First, DOA’s decision is not binding. Second, “public interest” is determined after quickly considering “whether the governmental services, including zoning, to be supplied to the territory could clearly be better supplied by the town or by some other village or city whose boundaries are contiguous to the territory proposed for annexation,” as well as the shape and homogeneity of the new addition of land.^{xxxiii} The review does not consider general impacts of the proposed development.

- **TIP:** If the annexation area is oddly shaped, push DOA to reject it. Additionally, try to expand the DOA analysis. Write the Department of Administration and explain your concern. Focus on reasons why the extension of city services would negatively affect the city. Promote the use of a Cost of Community Services (COCS) study to determine whether this type of annexation is in the “public interest.” A COCS is a snapshot in time of costs versus revenues for each type of land use.^{xxxiv}

C. How Can I Get Involved in an Annexation Decision?

1. Write Letters to the Governing Body

a. Get Other Residents to Send Letters or Sign on to Your Letters

Before focusing on legal arguments for rejecting an annexation proposal, residents should gather support from a wide range of community members. As soon as you hear the proposal coming, start organizing local leaders, business owners, and residents around a clear message: We want to preserve open space, and promote smaller developments that fill in and compliment the downtown area. No big-box development.

Without strong support, the best arguments will likely fall on deaf ears. As discussed below, residents cannot rely on legal challenges to secure responsible development. Residents must convince representatives that responsible growth is in the community’s best interest. There is no substitute for grassroots organization and strong, lasting political pressure; form a letter writing

campaign to your representatives, submit letters to the local newspaper, organize others to show up at all public meetings.

b. Focus on the Lack of a “Need” for More Land

After organizing, start to address the governing Council or Board’s legal obligations. In Wisconsin, annexation decisions are expected to comply with the “rule of reason.”^{xxxv} The “rule of reason” is established by a long line of Wisconsin court cases that require all annexations to 1) be reasonable in shape; 2) fulfill a demonstrable need; and 3) avoid any abuse of discretion.^{xxxvi} Using these factors as a guide, courts reject “arbitrary” or “unreasonable” annexation decisions.^{xxxvii}

While most annexation proposals satisfy the “rule of reason,” the factors can help focus your concerns. The required showing of a “reasonable need for the annexation” is particularly important when presenting your opposition to big-box development.^{xxxviii} Cities may “need” additional land to house a growing population or to accommodate an expanding commercial center.^{xxxix} Before annexing land, the City should not only identify the “need,” but provide evidence that the annexation will fit this need.^{xl} Generally, courts consider both the landowners’ and the City/Village’s needs when reviewing these decisions.^{xli}

There are, however, a range of factors that cities can use to demonstrate “need.”^{xlii} Therefore, one should not rely solely on the “need” requirement to overturn a big-box annexation decision. Nevertheless, the “need” prong presents an opportunity to address the unnecessary excess often associated with big-box development. Many of these developments are outside of small communities that could be served by smaller retail developments or larger communities that could accommodate more compact retail growth in areas within the city. In both these situations, the city does not need more land for the proposed commercial development.

Finally, if residents can dispel certain myths about big-box development, elected representatives may think twice about annexing land for large retail.

- ❖ **Myth 1:** Communities need big-box development to serve their growing population.

Big-box developments often extend retail far beyond the needs of the growing population. As of 2001, Americans had three times as much retail space *per person* than we did in 1980, yet new stores continue getting larger and larger.^{xliii} Many communities could be served by smaller developments that could link on to existing commercial areas. If your local representatives suggest that a big-box supercenter is needed, ask them if something smaller could meet the same needs in the downtown area.

- ❖ **Myth 2:** All growth is good growth.

Big-box developments are often supported by a perceived increase in tax revenue and employment. However, a wide range of economic studies have shown that big-box development often drains more tax revenue and jobs than they generate.

- In Ohio and Massachusetts, big-box retail showed average net annual *losses* in tax revenue of around \$0.44 per square foot due to the cost of extending services to these developments.^{xliv}
- In Missouri, the average community showed net *losses* of retail jobs four years after Wal-Mart® Supercenters arrived.^{xlv}
- In Iowa, 84% of the Wal-Mart® business came from people that live within the county and previously shopped at other businesses within the county.^{xlvi} As a result, existing retailers in these counties lost many thousands of dollars in sales over the 10 years after Wal-Mart® arrived.^{xlvii}
- In Mississippi, sales at food stores declined by 10% after a big-box supercenter came to town. Five years later, sales had declined by approximately 17%. At miscellaneous retail stores, sales declined by 2.3% in the first year after a supercenter opened and by 11.9% after five years.^{xlviii}

While individual developments may agree to compensate the city for all expenses, the principle remains the same: Big-box development wastes community resources.

- ❖ **Myth 3:** All new development is going to harm the environment in some way. Big-box developments should not be singled out.

Big-box development is in a league of its own. Big-box supercenters are generally pave over 20-30 acres of land, roughly five times more land than the average supermarket.^{xlix} The sheer size of these big-box developments poses risks to habitat and creates runoff problems for surrounding rivers and lakes. Moreover, the single story design often prevents big-box retailers from filing in abandoned downtown locations within a city, or “infill” areas, and instead pave over open spaces. Finally, big-box developments are catalysts for future sprawl by attracting traditionally downtown commercial traffic away from the downtown area and towards the community’s fringe.

- ❖ **Myth 4:** If we don’t annex the land, the county or township will rezone the land and the big-box will come with no tax benefits.

Your representatives may express fear that the big-box development will simply set up on town or county land if the city/village does not annex the property. However, large big-box developments need a wide range of municipal services, such as sewer and water, that are generally not provided in unincorporated areas, like towns and counties. Even if a big-box development could survive in a town, the town would inherit both the tax revenues and the costs of sending police, fire, snow removal and other required services to the big-box development. Multiple studies show that for every \$1.00 in tax revenue, cities spend an estimated \$1.10 providing city services.¹ If the town sets up the big-box, the city can avoid these costs. If the governing body does not believe these studies, ask them to commission an independent firm to do their own study on the area.

c. Look to the Comprehensive Plan for Guidance

To accurately address the current and future needs of the City/Village/Town, we suggest the use of the community's comprehensive plan. In Wisconsin, by January 1, 2010, all land use decisions are required to be consistent with a locally adopted comprehensive plan.^{li} Many communities have already spent time and money producing a comprehensive plan for commercial and residential development that will meet the community's current and future "needs" while protecting its resources. If the proposed location and type of development is not consistent with the plan, the annexation would not appear to fit the community's current or future needs and should be denied.^{lii}

d. Remind Your Local Representatives: "You Have the Power to Deny the Annexation Proposal"

Annexation is never mandatory.^{liii} City/Village officials have the authority to deny an annexation petition based on the belief that the city does not currently need more land in that location or for the proposed use.^{liv} Annexation is not a property right, but rather a mechanism for the City/Village to grow in a manner that meets the community needs. As such, the governing Council or Board has sole discretion over the decision.^{lv}

Make sure the message is clear: Both legally and practically speaking, the City/Village holds the cards. They can focus on sustainable planning or allow big-box sprawl. Do not let your representatives tell you they "have to do it."

2. Ask for an Advisory Referendum

Public opinion is important when considering annexation and rezoning decisions. The governing Council or Board must use its legislative power to annex and zone land in a manner that promotes the community's public health, safety, and welfare.^{lvi} In Wisconsin, courts consider public opinion and public testimony to be a valid source of information regarding a development's impact on public welfare and community values.^{lvii} To promote the use of public opinion in local legislative decisions, such as annexation and rezoning, state laws and local ordinances often require mandatory public hearings before a governing Council or Board enacts or amends legislation.^{lviii}

If the public is strongly against the annexation, ask your representatives to take the next step and send the issue to an advisory referendum. Advisory referenda allow governing Councils or Boards to gain a better understanding of the community concerns and potential impacts that the expansion may have on the community's welfare. Unlike a small scale public hearing, advisory referenda allow the Council to take a full look at the community's view on the issue. For issues of community-wide concern, an advisory referendum would be more informative and provide more credible information than public hearings alone.

However, advisory referenda are only productive if the community is well-informed and supports smart growth. If not, a referendum could backfire by giving more fuel to the argument that the community wants and needs big-box retail. Tread cautiously!

1. 3. File a Legal Challenge to an Annexation Decision

If you believe that land has been annexed in violation of the Wisconsin Statute provisions in Chapter 66 or the common law “rule of reason,” you may be able to challenge the decision in court. There are, however, a few key restrictions.

First, as in all legal challenges, you must have “standing” to challenge the annexation decision. For rezoning and annexation decisions, courts generally require that you have a financial interest that was directly injured by the decision.^{lix} Even more, your financial interest needs to be injured by the decision itself, not the development that may be approved later in the process^{lx}. For example, even in cases where big-box development is identified as the recipient of newly annexed land, the decision to annex land does not alone *create* the big-box development. The development needs additional zoning permits before construction begins and the city/village can deny zoning proposals regardless of the annexation decision. Therefore courts will likely separate the annexation decision from the development when assessing your “injury.”

Second, Wis. Stat. § 66.0217(11) specifically prohibits towns from challenge annexation decisions.^{lxi} This prohibition dramatically restricts the ability for affected residents to challenge annexation approvals.

Finally, if you have standing, your challenge of the City’s decision to enact an annexation ordinance must be brought within 90 days.^{lxii} If you meet these criteria, a challenge may be a good option. Annexation is often the doorway to big-box development in Wisconsin, and big-box developments that are placed on newly annexed parcels are often the most egregious with regard to sprawl. Additionally, if you challenge the annexation decision, the county zoning designation (often agricultural) is locked until the case is decided in court.^{lxiii} This feature of an annexation challenge puts the rapid big-box development process on hold and allows a court to review these decisions without the need for a separate injunction.

If you believe that an annexation decision violated statutory and common law requirements and you believe a member of your community group has standing to challenge an annexation decision, contact a land-use/municipal law attorney or [Midwest Environmental Advocates, Inc.](#) to hear more about your options.

VI. ZONING AND BIG-BOX DEVELOPMENT

Before attending zoning meetings, take time to understand *who* makes *what* decision. Once you know the framework for the zoning decisions, review your community’s zoning code and, if available, comprehensive plan. Finally, gather information on both big-box development and more sustainable commercial developments. In the end, you will be able to present well-informed, practical arguments both *for* sustainable growth and *against* single-story big-box developments.

A. Zoning Background

In general, cities, counties, and villages have the power to zone for the “purpose of promoting health, safety, morals or the general welfare of the community.”^{lxiv} Zoning ordinances divide the community into “districts” in an attempt to promote planned growth and to maintain the separation of inconsistent land uses. The location of zoning districts should generally promote uniform goals of the master or comprehensive plan.^{lxv}

The governing body in charge of zoning varies depending on the location of the proposed development. Call your municipal clerk’s office and ask which governing body is reviewing the proposal. Here is a general overview of zoning authority:

Governing Body in Charge of Zoning	Location of Development
City Council	Within city limits and up to 3 miles outside of the city (if extraterritorial zoning has been adopted).
County Board	Unincorporated areas; including towns that have not elected village powers. Note: If cities have not exercised their right to zone land outside of the city limits within two years of electing extraterritorial zoning then the county regains control. ^{lxvi}
Village Board	Land within village corporate limits.
Town Board	Subject to county zoning unless the Town elects “village powers.” Even with village powers, all ordinances must be approved by the County Board. ^{lxvii}

Before a governing body can use its zoning power, it must establish a Zoning Board of Appeals and a Master Plan.^{lxviii}

- **TIP:** Make sure your community has these elements in place before they consider zoning requests. Communities that have newly elected zoning powers may overlook these important elements!

Generally, cities/villages will create a Planning Commission that has the power to implement zoning laws that are created by the governing Council or Board.^{lxix} To be clear, City Councils/Village Boards/County Boards have the power to *create* zoning regulations; Planning Commissions generally have the power to *apply* these ordinances.^{lxx} Both bodies are important at different stages in the process.

B. County Zoning

County zoning laws apply to unincorporated areas (land outside of cities and villages), including most towns.^{lxxi} The County Board has the authority that makes zoning decisions for unincorporated areas and these decisions can be appealed to the County Board of Adjustments/Board of Appeals. State laws governing county zoning are very similar to laws

governing city and village zoning, and the tools described in following city/village zoning section can be applied to most County zoning decisions.

To understand whether an area is subject to county zoning, community members should first find out whether their town board has adopted zoning powers. As noted below, town zoning can add an extra set of approvals before developments are approved. Therefore, zoning requirements in unincorporated areas may vary across the county.

Some county zoning ordinances apply to all unincorporated areas, regardless of town zoning powers. Most notably, shoreland zoning and floodplain zoning are binding on town land use decisions regardless of town board approval.^{lxxii} If the proposed big-box development is near a shoreline or in a floodplain, check these county zoning regulations.

- **TIP:** When in doubt, ASK! If you do not know whether a development is in a shoreland or floodplain zone, ask the town or county Zoning Administrator. Your questions will raise awareness of the issue and show your representatives that you are watching.

C. Town Zoning

As discussed above, Wisconsin Statutes grant zoning power to counties, cities and villages, but not towns. Towns generally are subject to County Zoning. However, Town Boards have some authority over zoning ordinances that affect their town.^{lxxiii}

If a town(s) does not approve of county zoning ordinances:

- 1. Individual towns may adopt “village powers,” and/or**
- 2. A majority of affected towns may vote to challenge a proposed county ordinance.**^{lxxiv}

The most effective way for towns to control land use is to elect village powers.^{lxxv} To elect village powers, town board members must pass a resolution which formally elects village powers at an annual or special town meeting. When adopting village powers, the Town Board must follow all requirements set forth in Wisconsin Statutes sections 62.23, 60.60, and 61.35 (cities and villages). The town, like a city/village, needs to establish a Board of Zoning Appeals and pass a set of uniform zoning ordinances.^{lxxvi}

- **TIP:** If you live in a town, request that your town board elect village powers. If the powers are approved by a town vote, then the community can start the process of approving a big-box ordinance.

However, even with village powers, a town’s power to zone land is limited. As discussed above, all town zoning decision must be approved by the counties before they take effect.^{lxxvii}

- **TIP:** If your town has elected village powers and you disapprove of a rezoning decisions or other proposed zoning ordinance, contact the County Board and urge them to veto the town’s ordinances.

D. City/Village Zoning

Like counties, cities and villages have authority to zone land in a manner which promotes the “health, safety, morals, or the general welfare of the community.”^{lxxviii} Cities and villages are considered separate from counties for the purpose of county zoning laws and do not require county approval before enacting their own zoning ordinances.

When an irresponsible development proposal arises, you should check the zoning designation on the proposed site and react accordingly:^{lxxix}

2. Land Currently Zoned for Commercial Development

If the applicable zoning district currently allows commercial development, you should prepare for zoning permit hearings or site plan approvals. First, make sure that the proposed big-box development meets commercial zoning requirements. Not all commercial developments are the same and some commercial districts may restrict large-scale development or individual uses within a big-box supercenter (i.e. oil and lube center).

If the district requirements allow big-box development, check to see if the development is listed as a “permitted use” or a “conditional use.” Due to the wide range of services provided in large retail developments, conditional use permits (CUPs) are often required. If so, check Big-Box Ordinance and [Conditional Use Tool-kit](#).

3. 2. Land is Not Currently Zoned for Commercial Development: Rezoning Petitions

Big-box developments are often proposed in open spaces that are currently zoned for agricultural or residential land uses. If the land is not zoned for commercial development, the landowner needs to file a petition with the governing Council or Board to rezone the land (“rezoning petition”). To rezone property, the governing Council or Board needs to pass a new zoning ordinance or zoning amendment that changes the existing zoning designation. Before voting on a rezoning petition, the governing Council or Board often refers the petition to the Plan Commission for a non-binding recommendation. While state law sets basic procedures for rezoning, local ordinances often include additional procedures and/or notice requirements. Therefore, ALWAYS CHECK LOCAL ORDINANCES FIRST!^{lxxx}

Basic requirements for all rezoning petitions include the following:

a. Notice

Before voting on a rezoning petition, the governing body must meet the following requirements:^{lxxxii}

- A “class 2” notice to the public (the notice should be in the newspaper or otherwise posted two consecutive weeks prior to the hearing);
 - The clerk of any municipality which has boundaries within 1,000 feet of land to be affected by the proposed amendment must be sent written notice at least 10 days before the hearing; Local notice requirements must be met (for example, local ordinances may require notice to all “affected landowners” in the area.).
- **TIP:** Ask your governing body to change local zoning ordinances to require public hearings and notice to all affected landowners.

If a governing body fails to hold a public hearing or give “class 2” notice of that hearing, the ordinance may be considered void by Wisconsin courts.^{lxxxiii} However, do not rely on notice violations alone.^{lxxxiii} Your governing Council or Board can remedy the situation by re-hearing the rezoning proposal after providing adequate notice. If the Council or Board has not changed its mind, the rezoning ordinance will likely pass the second time around.

b. Procedure

Amendments to county, city, and village zoning ordinances generally follow the same procedures:

- **Step 1:** An applicant submits a proposed “rezoning petition” or zoning amendment to the governing body.
- **Step 2:** The governing body provides proper notice of an upcoming hearing.^{lxxxiv} See [Notice](#).
- **Step 3:** Neighboring landowners can file a [protest petition](#). (See below)
- **Step 4:** In some cases, the Plan Commission holds a hearing before the final governing body hearing and provides a recommendation.^{lxxxv} If local ordinances do not require Plan Commission recommendation, the rezoning proposal will go directly to the governing body hearing.
- **Step 5:** The governing body holds a hearing and votes to accept, deny or modify the ordinance.^{lxxxvi}

Note: There is an added step for Towns exercising Village Powers. Towns operating under village powers must have amendments approved by the county if the county has a zoning ordinance. The Regional Plan Commission’s recommendation is often sought. Remember to check town and county ordinances for local procedures for re-zoning.

c. Protest Petitions

In cities, landowners representing twenty percent (20%) or more of either the land inside the proposed rezoning area or within 100 feet of the rezoning can protest the rezoning amendment. If the protest petition is filed before the vote, the re-zoning proposal will require approval from three-fourths (3/4) of the governing body to pass instead of the standard two-thirds (2/3) margin.^{lxxxvii}

In counties/towns, landowners representing fifty percent (50%) or more of either the land inside the proposed rezoning area or within 300 feet of the rezoning can protest an amendment.

- **TIP:** Immediately contact neighboring landowners. Have them sign a [petition](#) that was drafted in accordance with [Wis. Stat. § 8.40](#) requirements.

E. Challenging the Rezoning Proposal

As soon as you know that the big-box development requires rezoning, start organizing and contacting your representatives. As discussed above, contact the neighboring landowners regarding a protest petition. Additionally, prepare letters and testimony for public hearings on the rezoning petition. When putting sending out letters to the governing body, keep these strategies in mind:

1. Focus on the Council or Board’s legal obligations

a. Zoning must have a public benefit

Local governments must use their zoning power to benefit the public.^{lxxxviii} At the very least, the governing body should identify public benefits associated with the new zoning classification.

- **TIP:** Make a long list of the negative impacts of the proposed development and present them to your governing Council or Board. Focus on the difference between the former use and the proposed use within the context of the surrounding area (i.e. farm land had low traffic and good stormwater infiltration; big box development increases traffic and hinders stormwater filtration). Connect these negative impacts to the health, safety and welfare of residents that live around the development.
- **TIP:** Question any governing Council or Board decision to forgo impact studies before rezoning for big-box development. How do they know that this action is not going to negatively affect the health, safety, and welfare of the community? The governing Council or Board should research the impacts of the zoning change and base its decisions on such research.

b. Rezoning decision must not be “arbitrary” or “unreasonable”

After a rezoning decision is made, it is difficult to reverse. Courts presume that local zoning decisions are valid and will only overrule the local decision if someone shows that the decision was “arbitrary” or in some other way violates the law. Arbitrary decisions are those that are based on “unconsidered, willful and irrational choice of conduct and not the result of the 'winnowing and sifting' process.”^{lxxxix} In other words, governing bodies need to base decisions on evidence that reasonable people can rely on.^{xc}

With this standard in mind, make a clear point to the governing body: It is unreasonable to ignore negative environmental, economic, and social impacts associated with big-box development. If community members present studies that identify a wide range of negative impacts associated with big-box development, it seems reasonable to expect the governing body to take time to consider whether the developer’s information is reliable. As part of the “sifting” process, the governing body should address the studies and identify evidence that supports the proposal in light of these impacts.

- **TIP:** Provide the governing body a set of studies that identify negative impacts. Bring these studies to public hearings and submit them with testimony asking that they be placed on the record. Make it clear that to reach a reasoned decision, the governing body must address the perceived negative impacts associated with the proposal.

c. Zoning decisions may not constitute illegal “spot zoning”

Rezoning decisions that change zoning designations for specific plots of land in a manner that is incompatible with the surrounding area, may constitute illegal “spot zoning.”^{xcii} If the plan commission wants to relieve a specific lot or group of lots from the zoning designation around them, they need to either:

- Rezone surrounding the whole area to provide conditions that are uniform for the similar plots in the areas; or
- Rezone specific lots based on a certain attribute that makes them different from surrounding lots; or
- Deny the rezoning and instead require that the applicant apply for a special exemption or variance from existing requirements. The distinction between a variance and rezoning petition is important to note. To receive a variance, a landowner must show “undue hardship.” See [Variance](#).

However, spot zoning is valid if there is a clear and “reasonable” basis for it.^{xciii} Factors to help consider validity of spot zoning include:

- Size of area (more acceptable for larger areas or land);
- Compatibility with the comprehensive/master plan;
- Benefits outweigh harm to the public;
- Compatibility with surrounding uses.

Overall, courts look at the governing Council or Board’s reason for rezoning an individual plot of land.^{xciii} If there appears to be a reason why the plot deserves different treatment, courts will likely uphold the zoning decision.

- **TIP:** If the community finds that the governing Council or Board is frequently spot zoning, then citizens should request that the governing Council or Board consider revising the zoning ordinance. Frequent spot zoning is usually a result of an out-of-date zoning ordinance. If your community can address zoning changes without a development proposal lingering in the background, there is a greater chance that the new zoning code will reflect that community’s long-term goals.

2. Contact the Mayor or County Executive

In cities, the mayor has veto over the acts of the city council.^{xciv} The County Executive holds similar power over county zoning decisions.^{xcv} Contact the Mayor or County Executive and explain your concerns regarding big-box development. Ask him/her to oppose annexation or rezoning decisions that promote irresponsible growth.

3. Request an Advisory Referendum.

Like annexation decisions, rezoning decisions are legislative in nature. When making rezoning decisions, governing bodies should feel free to solicit public opinion through advisory referenda. For more information see [Annexation—Ask for an Advisory Referendum](#).

However, advisory referenda can hurt your cause if the public is not educated on the impacts of big-box development and/or does not appreciate the benefits of smart growth. Therefore, a referendum should only be pursued if the community overwhelmingly opposes big-box or other sprawling developments.

4. Contact the Media

Once you have a practical, well-informed argument regarding the rezoning proposal, contact the media and raise awareness. The more people that know about a rezoning decision, the more likely the governing body will make an informed decision. Consider drafting letters to the Editor of the most widely-distributed local newspaper, sending press releases on behalf of local residents, or forwarding letters that you send to the governing body to reporters.

F. Who Can Challenge Zoning Decisions?

As mentioned above, community members should exhaust both legal and political avenues when challenging a proposed big-box development. Effective political advocacy includes:

- writing letters to the governing Council or Board and Plan Commission;
- contacting the media; and
- organizing residents and facilitating political resistance against irresponsible zoning and annexation decisions.

For more information on political organization, look at [Midwest Environmental Advocates' "Guide to Community Organizing"](#)

Zoning decisions are political by nature and must be challenged politically. Get people to contact the governing body, show up at all applicable meetings, and present a clear message that highlights practical reasons for choosing compact, well planned commercial growth over big-box development. Most of all, be persistent!

The governing body has a legal obligation to protect the public and enforce zoning standards. Community members should make the connection between this legal obligation and the community's concerns about big-box development. For example, if traffic is a concern, identify aspects of the zoning code that address traffic congestion and discuss the impact that increased

traffic will have on public health and welfare. By connecting zoning code policies and requirements to big-box impacts, you can clearly show your representatives that they have an obligation to address your concerns. Overall, highlight the governing body's authority and responsibility to promote sustainable growth and deny irresponsible developments.

If the political challenge is unsuccessful, your legal rights may or may not be protected through a formal legal challenge. Courts only accept cases that are brought by people that show a specific and substantial injury that is being caused by the proposed annexation or zoning decision.^{xcvi} To bring a legal challenge, you, or a member of your community group, must be *personally* and *directly* "injured" by the decision.^{xcvii} In Wisconsin, courts generally look for a monetary loss, such as clear depreciation of land values or loss of revenue due to the new ordinance.^{xcviii} Your status as a taxpayer is likely not be enough to show a direct financial interest in the decision.^{xcix}

Lastly, the injury must be tied to the underlying annexation or zoning ordinance, not just the proposed development. The annexation and/or zoning decision does not guarantee that a development will be built and, therefore, impacts associated with the big-box development are not "directly" caused by the annexation or rezoning.^c

To exhaust all legal avenues, you should gather evidence throughout the process that demonstrates a personal and direct injury. For example, look for indicators that your land value will be diminished and/or your quality of life will suffer in a tangible way as a result of the decision to allow large-scale commercial development on the land in question. Again, look at what injury you will suffer as a result of the zoning change, whether or not this change will ultimately set up a big-box development. The new ordinance may allow more noise, traffic, air pollution from cars and parking lots than is allowed under the current zoning designation. If you find that the new zoning designation allows these impacts, you should take the next step and tie this degradation to your property value or way-of-life.

Remember, successful challenges involve both political and legal awareness. Whether or not you have standing to bring a legal challenge, political efforts to change decisions are usually the most effective. The best approach is to identify your legal rights and the governing body's obligations, and use these legal arguments to bolster a strong political movement with clear goals for sustainable development.

G. Standard of Review For Rezoning Challenges

Local governments are often fearful of lawsuits brought by developers and/or community groups. You can help calm their nerves by explaining an important fact: If the governing body clearly addresses community concerns and explains why they believe the decision will or will not meet the goals of the zoning code and comprehensive plan, the courts are on their side.^{ci}

On review, courts will likely defer to the governing body's decision, unless:

1. The governing body did not have authority to make the decision;
2. The governing body incorrectly interpreted the law;

3. The decision was “arbitrary, oppressive or unreasonable;” and
4. The evidence was such that the governing body could not reasonably arrive at its decision.^{cii}

Before appealing the governing body’s decision, parties will generally look for evidence that supports one of the above arguments. Appeals are far less likely if the body directly demonstrates that they have the authority to make the decision, enough evidence to make the decision, and the decision is based on a correct interpretation of the law.

Fortunately, both the city and concerned residents win when the governing body evaluates all available information and walks the community through its decision. By taking time to gather evidence, address concerns, and link the decision to the overall plan for city growth, the city not only protects itself from challenges, but promotes smart growth.

VII. CONDITIONAL USE/SPECIAL EXEMPTION PERMITS

Big-box developments are often considered “conditional uses” under their zoning designation. Conditional uses are uses that are allowed under the zoning designation, but still pose certain threats that need individual attention before construction can begin. A good example would be a gas station in a commercially-zoned area. Gas stations are often allowed in commercial areas, but only with conditions that address site-specific concerns. Community members can usually find a list of conditional uses for each zoning district in the local ordinances.

If the development is considered a conditional use, the applicant is required to obtain a “conditional use permit” (CUPs) before construction can begin. CUPs allow the governing body, usually the Plan Commission, to set conditions on the development’s proposed design and use to protect the public from potentially negative impacts. Zoning ordinances often provide criteria for evaluating conditional uses, but the governing body can add any condition it deems necessary to adequately protect the public’s welfare and safety. Specific conditions for big-box developments are outlined in [MEA’s Big-box Ordinance](#) and [Conditional Use Permit Tool-kit](#).

- **TIP:** Look on your community’s webpage or contact your clerk to ask whether a use requires a CUP.
- **TIP:** The CUP hearing is a key point in the process. Contact the Plan Commission, Mayor, Common Council/Village Board, County Board to explain why the big-box development does not meet basic requirements of the zoning code (i.e. traffic, flooding, economic impact). Also, include a list of important conditions that would minimize the impact.

A. Eligible Uses

When reviewing a CUP application, it is important for the Plan Commission to first decide whether the use is actually a conditional use. A conditional use is *explicitly permitted* under the zoning code.^{ciii} If the use is not explicitly permitted, the applicant is required to obtain a variance.^{civ} Often, a CUP can be mistakenly given to a use that actually requires a variance.

Therefore, it is important to address the distinction between a conditional use permit and a variance.

Big-box developments may not meet basic standards in their zoning district. For example, a commercial district may only allow “small community businesses” or set maximum square footage limits. If a big box proposal does not meet these criteria, the big-box developer would need a variance, not a conditional use permit. To receive a conditional use permit, the big-box developer must show that the use will comply with all of the zoning code requirements.^{cv} The governing body should not grant CUPs to uses that have not been shown to be within the bounds of the zoning ordinance.^{cvi}

- **TIP:** Ask the governing body to walk through each requirement and have big-box developer demonstrate compliance. Remember, a clear explanation during the conditional use process could save everyone time later in the process. See [Standard of Review](#).

If the use meets all zoning requirements and is designated a “conditional use,” then the governing body, usually the Plan Commission, holds a hearing to assure compliance with all necessary conditions.

B. Proper Conditions

Conditional use permit (CUP) conditions are used to control certain uses that have recognized risks. To be very clear, these conditions are not used to bring a prohibited use into compliance, but rather to supplement existing requirements.^{cvi} See [Variance](#).

Conditions are often prescribed in the applicable zoning ordinance section. Along with certain specific conditions in the ordinance, the overall zoning code or ordinance section may set forth general criteria, statements of purpose and intent, or other goals that should be considered conditions of CUP approval. For example, in *Kraemer & Sons v. Sauk County Board of Adjustment*, the applicant was required by ordinance to demonstrate that the use was a “wise use of the county's resources.”^{cviii} The court accepted this requirement as a condition for CUP approval.^{cix}

Finally, the governing body has authority to add any conditions it deems necessary to protect the public from potentially negative impacts.^{cx}

C. Conditional Use Permit Hearings

The Plan Commission, or other designated governing body, has the important responsibility of addressing all necessary conditions during the CUP hearing process.^{cx} To assure an open, public discussion of the development’s impacts, the applicant should provide sufficient information to the Plan Commission and public by the time the first notice of the final hearing is given.^{cxii} After viewing the complete site plan and application, the Commission or governing body must

prescribe conditions to meet conditional use criteria found in the ordinance and promote public health, safety, and welfare.^{cxiii}

If the permit does not adequately assure compliance with all conditional use criteria in the zoning ordinance and protect the general public, you may appeal the decision to the local Board of Zoning Appeals/Adjustment.^{cxiv} Procedures for appealing the decision are generally set forth in local ordinances. The Board of Zoning Appeals/Adjustment may deny the entire permit, modify it, grant it, or send it back for further hearings.^{cxv}

For a Detailed List of Conditions for Conditional Use Permits (CUPs), consult MEA's [Conditional Use Permit Tool-Kit](#).

VIII. VARIANCES

As discussed above, proposed land uses that do not clearly meet all zoning requirements, are required to obtain a variance.^{cxvi} Unlike conditional use permits (CUPs), variances actually remove legal requirements for the proposed use. Given the preferential treatment given to the applicant, variances should be rare and much more difficult to receive than conditional use permits. Variances are generally restricted to cases where: 1) the zoning requirements cause the landowner “unnecessary hardship;” 2) the hardship is unique to the landowner’s property; and 3) the land use will not be against the public interest.^{cxvii} Before the governing body can reasonably approve a variance, the applicant has the burden of demonstrating that all of these characteristics apply to his/her proposed use.^{cxviii} If the proposed big-box development requests variances, be prepared to address the above requirements.

A common area of debate regarding variances is the applicants’ “unnecessary hardship.”^{cxix} In Wisconsin, the court’s treatment of “unnecessary hardship” differs depending on whether the applicant needs a “use variance” or a “dimensional variance.”^{cxx} For example, big-box development may need a “use variance” if the zoning ordinance does not allow commercial developments that attract heavy traffic. A big-box development would need a “dimensional” or “area” variance if the proposed development is larger than prescribed under the ordinance, or includes certain design features that are not allowed in that district (e.g. signs, setbacks...etc.).

For “use variances,” applicants must show that there is no “feasible [i.e. reasonable] use” of the property under the applicable zoning laws.^{cxxi} “Reasonable use” is not necessarily “ideal use” and profit maximization does not factor into the “reasonable use” analysis.^{cxxii} For example, a small residential project is a “reasonable use” regardless of whether the owner intended to build a larger development.^{cxxiii}

“Dimensional” or “area variances” do not require a showing of no reasonable use, but still require a showing of unreasonable hardship. Specifically, area variance applicants must show that adherence to the “strict letter” of the zoning code would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.”^{cxxiv} Whether or not a site increases its physical

footprint, an expansion that allows a greater impact may be considered a prohibited expansion in certain zoning districts.^{cxxv}

When reviewing “unnecessary hardship,” it is important to remember:

1. Hardship cannot be self-created.^{cxxvi} For example, the inability to complete a project that began without proper authority or to develop land due to a previous land alteration does not constitute “unnecessary hardship.”^{cxxvii}
2. The cause of the hardship must be unique to the landowner.^{cxxviii} The fact that a landowner has a unique financial investment or will suffer a unique harm is not enough to meet this burden.^{cxxix} While the loss of a unique investment is a unique *effect* of meeting zoning requirements, it is not evidence of a unique *cause*. The property must have unique characteristics that causes hardship.^{cxxx}
3. The use cannot be adverse to the public interest.^{cxxxi}

As with CUPs, the governing body’s decision to grant a variance has a lasting impact. Unless appealed, the governing body cannot revisit the permit. The variance is likely permanent.^{cxxxii} To assure parties that an application meets such a high standard, it is important for the city to take a hard look and thoroughly explain the legal support for its decision.

IX. CHALLENGING CONDITIONAL USE PERMIT/VARIANCE APPROVAL

Generally, “aggrieved” members of the public can appeal the decision of the governing body with regard to the conditional use permit or variance.^{cxxxiii} However, the appeal must go through the proper channels. First, members of the public must appeal the CUP decision to the local Board of Zoning Appeals.^{cxxxiv} Check your local ordinances for deadlines on bringing appeals for zoning and land use decisions. The Board of Zoning Appeals is generally the first to hear an appeal of a CUP decision made by the governing body.^{cxxxv} The Board generally takes a fresh look at the application and comes to an independent decision.^{cxxxvi}

After the Board of Zoning Appeals comes to a decision, the “aggrieved” members of the public can appeal the Board’s decision in circuit court.^{cxxxvii} Any appeal of the Board of Zoning Appeals’ decision must be brought within 30 days.^{cxxxviii} In court, the standards for “judicial review” are used.^{cxxxix} Also, in certain cases the zoning decision can be appealed directly to the circuit court.^{cxl} Given the potential for a circuit court review, it is important to stress the standards of review used in the circuit court when arguing that strict CUP conditions are necessary and required by law. As always, submit studies and facts to the governing bodies that support your arguments and provide context for the Board of Zoning Appeals or Circuit Courts’ potential review of the governing body’s decision. See also [Standard of Review For Rezoning Challenges](#) and [Challenging a Rezoning Decision](#).

X. SUBDIVISION

Big-box supercenters often include “outlots” for other commercial development. These “outlots” are subdivided areas surrounding the main big-box development that could be

developed by other businesses, namely gas stations and restaurants, at a later date. Sometimes these subdivisions will require plat approval. Wisconsin law requires all subdivisions of 5 or more parcels of 1 ½ acres or less to submit a plat to the local government body (generally the Plan Commission) for approval. As with any regulation on development, local ordinances often add additional requirements. Always check local ordinances to see if plat approval is required for the proposal in question.

In general, plat approval involves:^{cxli}

- 1) Informal sketch plan (concept plan), to make sure that the Commission does not spend a lot of money in step 2 on an unwanted proposal
- 2) Preliminary Plat (expensive), which should include enough detail to show the Commission that all the standards have been met. The plat is often circulated through various subcommittees for technical review (i.e. Public Works Committee, Public Health Department, ...etc.).
- 3) Final Plat Approval

If a conditional use permit (CUP) is not required, the plat approval may be the only forum to address the effects on traffic, the environment, the downtown economy, etc. Make sure you contact the governing body (usually the Plan Commission) and identify specific conditions that should be included in the plat approval. You should use the same conditions that are described in the [Conditional Use Permit Tool-Kit](#).

XI. DEVELOPMENT AGREEMENTS AND CONTRACT ZONING^{cxlii}

Often, there is a fine line between a Development Agreement and an illegal contract to rezone land. Under Wisconsin law, a governing Council or Board cannot rezone based on future conditions from the landowner, but can delay the date that the rezoning goes in to effect until the date the owner agrees that conditions will be met.^{cxliii} If the landowner fails to meet the conditions set in the Development Agreement, then the rezoning decision may be automatically repealed (called an automatic repealer clause).^{cxliv} Additionally, the landowner can meet certain conditions before petitioning for rezoning. The governing body's decision, however, is NOT bound by the actions of the individual.^{cxlv}

Conditional zoning decisions are still zoning decisions and are bound by the same requirements as any other zoning decision. Regardless of conditions in a Development Agreement, the governing body must hold all necessary public hearings and assure the public that the rezoning decision is reasonable and protects public health and welfare. See [Challenging the Rezoning Proposal](#).

XII. CONCLUSION

Communities can successfully prevent irresponsible development if they are well-informed, organized, and focused. It is your responsibility to get the word out that big-box development

unnecessarily threatens our natural resources and healthy, community-based lifestyles. Get your neighbors to put up signs and write letters supporting smart growth. Act early and often.

Finally, know your rights. Focus your arguments to target the decision makers' legal and political obligation to consider the negative impacts of sprawl; evaluate the needs and concerns of the community; and act in a manner which promotes long-term health, safety, and welfare in the community.

People need communities, not highway districts. By promoting compact, well-planned commercial growth, you are living up to your responsibility as a community member and helping to build a thriving, sustainable community.

- ⁱ BENNET HEART & JENNIFER BIRINGER, *THE SMART GROWTH-CLIMATE CHANGE CONNECTION* (Conservation Law Foundation, Nov. 1, 2000).
- ⁱⁱ Institute of Traffic Engineers estimates an average **76,232 car trips per week** to big-box supercenters. This is equivalent to 1 car per 8 seconds for 24 hours-a-day and 7 days-a-week. See INSTITUTE OF TRAFFIC ENGINEERS, *TRIP GENERATION* (7th ed. 2003).
- ⁱⁱⁱ U.S. ENVIRONMENTAL PROTECTION AGENCY, *GREEN BOOK: 8-HOUR OZONE NONATTAINMENT STATE/AREA COUNTY REPORT* (last updated Mar. 30 2007), available at <http://www.epa.gov/air/oaqps/greenbk/gncs.html#WISCONSIN> (last visited June 12, 2007).
- ^{iv} Centers for Disease Control and Prevention, *State of Childhood Asthma 1980-2005* (Dec. 12, 2006), available at <http://www.cdc.gov/nchs/pressroom/06facts/asthma1980-2005.htm> (last visited August 18, 2007) [hereinafter CDC]; See also EPA, “What is Ozone?” available at <http://www.epa.gov/03healthtraining/what.html> (last visited August 14, 2007); American Lung Association, *Ozone Fact Sheet*, available at <http://www.lungusa.org/site/pp.asp?c=dvLUK900E&b=50328> (last visited August 14, 2007).
- ^v MARYLAND DEPARTMENT OF THE ENVIRONMENT, *2000 MARYLAND STORMWATER DESIGN MANUAL, VOLUMES I & II*, ch. 1, § 1.1 (Apr. 2000), available at <http://www.mde.state.md.us/assets/document/chapter1.pdf> (last visited June 12, 2007).
- ^{vi} WISCONSIN DEPARTMENT OF NATURAL RESOURCES, *ABOUT RUNOFF MANAGEMENT* (last revised Aug. 2006), <http://www.dnr.state.wi.us/org/water/wm/nps/about.htm> (last visited June 12, 2007).
- ^{vii} **Cite Brennen Study**
- ^{viii} Wisconsin hosts roughly 90 Wal-Marts (including 12 Sam’s Clubs) throughout the state, not to mention Targets, K-Marts, and other one-stop big-box retailers. See WAL-MART STORES, INC., *WISCONSIN COMMUNITY IMPACTS* (last modified June 7, 2007), <http://www.walmartfacts.com/StateByState/?id=48> (last visited June 12, 2007).
- ^{ix} Constance Beaumont & Leslie Tucker, *Big-Box Sprawl (And How to Control It)*, 43 *MUNICIPAL LAWYER* (Mar./ Apr. 2002), available at http://www.nationaltrust.org/smartgrowth/Big_Box_Sprawl.pdf (last visited June 12, 2007).
- ^x In Monona, WI, Wal-Mart is constructing a Supercenter with underground parking.
- ^{xi} See WIS. STAT. § 62.23(7)(a) (2007).
- ^{xii} WIS. STAT. §§ 62.11; 62.23(7)(d) (2007).
- ^{xiii} WIS. STAT. §§ 61.34; 61.35 (2007).
- ^{xiv} WIS. STAT. §§ 59.51; 59.69(5) (2007).
- ^{xv} See WIS. STAT. § 62.23(1) (2007).
- ^{xvi} WIS. STAT. §§ 62.23(1)(a),(7)(a) (2007).
- ^{xvii} WIS. STAT. §§ 62.23(7), 60.22(3), 59.69(3), 66.1001 (2007); WISCONSIN DEPARTMENT OF ADMINISTRATION, *WISCONSIN’S COMPREHENSIVE PLANNING LEGISLATION 1* (last revised Oct. 24, 2005), available at http://www.doa.state.wi.us/docs_view2.asp?docid=5436 (last visited June 12, 2007).
- ^{xviii} **Comp Planning public participation**
- ^{xix} On its website, Dane County [WI] Better Urban Infill Development (BUILD) Program defines “infill development” as “the economic use of vacant land, or restoration or rehabilitation of existing structures or infrastructure, in already urbanized areas where water, sewer, and other public services are in place, that maintains the continuity of the original community fabric.” See <http://www.countyofdane.com/plandev/community/build/about.asp#infill> (last visited June 12, 2007).
- ^{xx} WIS. STAT. § 62.23(7a) (2007).
- ^{xxi} See *Mount Horeb Cmty. Alert v. Vill. Bd. of Mt. Horeb*, 263 Wis. 2d 544, 665 N.W.2d 229 (Wis. 2003). Generally, it is wise to submit the petition to both the City Council/Village Board/Town Board and the Plan Commission. The City Council/Village Board/Town Board has the final authority to pass this ordinance, but the Plan Commission plays an integral role in developing its substance and recommending action.
- ^{xxii} WIS. STAT. § 62.23(7a)(c) (2007).
- ^{xxiii} First class cities have more than 150,000 people, second class cities have more than 39,000 people, third class cities have more than 10,000 people, and fourth class cities have less than 10,000 people. Note that cities must initiate class change, so some cities in Wisconsin have a larger population but are classified as smaller cities. For example, Milwaukee is the only first class city in Wisconsin, though Madison has the necessary population to become first class if it so chose. Wisconsin State Legislature Legislative Reference Bureau, *Counties, Cities, Villages and Towns: Forms of Local Government and their Function*, 6 *GOVERNING WISCONSIN* (Oct. 2005), available at http://www.legis.state.wi.us/LRB/gw/gw_6.pdf (last visited June 12, 2007). To find classifications of Wisconsin cities as of January 1, 2005, see WISCONSIN STATE LEGISLATURE LEGISLATIVE REFERENCE BUREAU, *BLUE BOOK 2005-2006*, at 754 (2005), available at <http://www.legis.state.wi.us/lrb/bb/05bb/744-779.pdf> (last visited June 12, 2007).
- ^{xxiv} WIS. STAT. § 62.23(7a)(a) (2007). BRIAN OHM, *GUIDE TO COMMUNITY PLANNING IN WISCONSIN*, at ch. 6, § 1.4 (Bd. of Regents of the U. Wis. Syst., 1999), available at http://www.lic.wisc.edu/shapingdane/resources/planning/library/book/chapter06/chap6_1-4.htm (last visited June 12, 2007).
- ^{xxv} WIS. STAT. § 62.23(7a)(b) (2007).

^{xxvi} All Wisconsin Statutes (Wis. Stat.) are available at the Wisconsin State Legislature Revisor of Statutes Bureau website at <http://www.legis.state.wi.us/rsb/stats.html> (last visited August 14, 2007).

^{xxvii} WIS. STAT. § 66.0217(2) (2007).

^{xxviii} WIS. STAT. § 66.0217(3)(a) (2007).

^{xxix} WIS. STAT. § 66.0217(3)(b) (2007).

^{xxx} WIS. STAT. § 66.0219 (2007).

^{xxxi} WIS. STAT. § 66.0221 (2007).

^{xxxii} WIS. STAT. § 66.0217(6)

^{xxxiii} WIS. STAT. § 66.0217(6)(c)(1) (2007).

^{xxxiv} For more information, see AMERICAN FARMLAND TRUST'S FARMLAND INFORMATION CENTER, COST OF COMMUNITY SERVICES (Aug. 2004). This fact sheet is available at http://www.farmlandinfo.org/documents/27757/FS_COCS_8-04.pdf (last visited June 12, 2007).

^{xxxv} See *Town of Delavan v. City of Delavan*, 176 Wis. 2d 516, 538; 500 N.W.2d 268 (Wis. 1993); *Town of Pleasant Prairie v. City of Kenosha*, 75 Wis. 2d 322, 327, 249 N.W.2d 581, 585 (Wis. 1977); *City of Beloit v. Town of Beloit et al.*, 47 Wis. 2d 377, 382-84, 177 N.W.2d 361 (Wis. 1970).

^{xxxvi} *Id.*

^{xxxvii} *Olson v. Rothwell*, 28 Wis. 2d 233, 238-39, 137 N.W.2d 86 (Wis. 1965).

^{xxxviii} See *City of Beloit*, 47 Wis. 2d at 385.

^{xxxix} *Town of Sugar Creek v. City of Elkhorn*, 231 Wis. 2d 473, 482-83, 605 N.W.2d 274 (Ct. App. 1999).

^{xl} See *Delavan*, 176 Wis. 2d at 540 (holding that a city cannot rely on inferred benefits).

^{xli} See, e.g., *Town of Delavan*, 176 Wis. 2d at 539-41; see also *Town of Sugar Creek*, 231 Wis. 2d at 482-83 (Ct. App. 1999); but see *Town of Lafayette v. City of Chippewa Falls*, 70 Wis. 2d 610, 629-30, 235 N.W.2d 435 (1975).

^{xlii} See, e.g., *Town of Delavan*, 176 Wis. 2d at 539-41; see also *Town of Sugar Creek*, 231 Wis. 2d at 482-83 (Ct. App. 1999).

^{xliii} *Beaumont & Tucker*, *supra* note 10, at 9.

^{xliv} See RANDALL GROSS, DEVELOPMENT ECONOMICS (for ACP VISION & PLANNING, LTD. & MID-OHIO REGIONAL PLANNING COMMISSION), UNDERSTANDING THE FISCAL IMPACTS OF LAND USE IN OHIO 3 (Aug. 2004), available at <http://www.regionalconnections.org/documents/pdf/fiscalimpacts.pdf> (last visited June 12, 2007); see also TISCHLER & ASSOCIATES, INC. (for TOWN OF BARNSTABLE, MA), FISCAL IMPACT ANALYSIS OF RESIDENTIAL AND NONRESIDENTIAL LAND USE PROTOTYPES (July 2002), available at http://walmartwatch.com/img/documents/battlemart_docs/Economic_Impact/Fiscal_Impact_Analysis_of_land_use_town_of_barnstable_MA_Ju.pdf (last visited June 12, 2007).

^{xlv} Emek Basker, *Job Creation or Destruction? Labor-Market Effects of Wal-Mart Expansion*, University of Missouri, 87 REV. OF ECON. & STATS. 174, (February 2005). A brief summary of this article is available on the MIT Press Journals website at <http://www.mitpressjournals.org/doi/abs/10.1162/0034653053327568> (last visited June 12, 2007).

^{xlvi} ELIZABETH HUMSTONE & THOMAS MULLER, WHAT HAPPENED WHEN WAL-MART CAME TO TOWN? A REPORT ON THREE IOWA COMMUNITIES WITH A STATISTICAL ANALYSIS OF SEVEN IOWA COUNTIES 2 (National Trust For Historic Preservation, 1996). A brief summary of this study is available on the Institute for Local Self Reliance's "Big Box Economic Studies" webpage at <http://www.newrules.org/retail/econimpact.html#1> (last visited June 12, 2007).

^{xlvii} KENNETH E. STONE, COMPETING WITH THE DISCOUNT MASS MERCHANDISERS (Iowa St. U., 1995), available at http://www.econ.iastate.edu/faculty/stone/1995_IA_WM_Study.pdf (last visited June 12, 2007).

^{xlviii} KENNETH E. STONE, GEORGEANNE ARTZ, & ALBERT MYLES, THE ECONOMIC IMPACT OF WAL-MART SUPERCENTERS ON EXISTING BUSINESSES IN MISSISSIPPI 24 (Miss. St. U. Extension Serv., 2002), available at <http://www.econ.iastate.edu/faculty/stone/MSSupercenterstudy.pdf> (last visited June 12, 2007).

^{xlix} **CITE New Rules**

¹ See RANDALL GROSS, *supra* note 42, at 3; see also TISCHLER & ASSOCIATES, *supra* note 42.

^{li} WIS. STAT. § 66.1001(3) (2007); see WISCONSIN DEPARTMENT OF ADMINISTRATION, *supra* note 18, at 1.

^{lii} But see *Step Now Citizens Group v. Town of Utica Planning and Zoning Committee*, 2003 WI App 109; 264 Wis. 2d 662 (Ct. App. 2003) (holding that comprehensive plans are advisory).

^{liii} The City's authority to approve or deny direct annexation petitions is set forth in chapter 66 of the Wisconsin Statutes. According to Wisconsin Statutes section 66.0217(2), the City *may* agree to annex land if the petition follows all requirements set forth in that section. Given the problems associated with irresponsible annexation, the City's power to annex property is additionally constrained by the "rule of reason."

^{liv} See *City of Beloit*, 47 Wis. 2d at 384.

^{lv} See *Pleasant Prairie v. Kenosha*, 75 Wis. 2d 322, 327-28, 249 N.W.2d 581 (Wis. 1977)

^{lvi} *Buhler v. Racine Co.*, 33 Wis. 2d 137, 150-51, 146 N.W.2d 403 (Wis. 1966) (stating that zoning should not be for the sole benefit of a property owner).

- ^{lvii} See, e.g., *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment*, 125 Wis. 2d 387, 397-98, 373 N.W.2d 450 (Ct. App. 1985) (upholding limitation on the size of an egg laying facility based on concerns over traffic, odor and waste disposal, without saying whether expert testimony was given or needed), *aff'd*, 131 Wis. 2d 101, 388 N.W.2d 593 (1986); see also *Town of Hudson v. Hudson Town Bd. of Adjustment*, 158 Wis. 2d 263, 277, 461 N.W.2d 827 (Ct. App. 1990) (upholding denial of a special exception/conditional use permit for an expanded service station based on community concerns with proposed additional parking, without expert testimony); *Delta Biological Resources, Inc. v. Bd. of Zoning Appeals*, 160 Wis. 2d 905, 914-915, 467 N.W.2d 164 (Ct. App. 1991) (upholding denial of conditional use permit for plasma center based in part upon opposing petition by area residents concerned about possibility of loitering, and noting that the weight to be accorded facts is for the board); see also *Old Tuckaway Assocs. Ltd. Partnership v. City of Greenfield*, 180 Wis. 2d 254, 275, 509 N.W.2d 323 (Ct. App. 1993) (upholding denial of amendments to a planned unit development based on aesthetics and economic feasibility, notwithstanding expert testimony that the project would otherwise comply with local regulations).
- ^{lviii} See WIS. STAT. § 62.23(7)(d) (2007); DELAFIELD, WI., MUN. CODE § 17.87(5) (2007), available at <http://www.municode.com/Resources/gateway.asp?pid=12542&sid=49> (last visited June 12, 2007).
- ^{lix} *Village of Slinger v. City of Hartford*; 256 Wis. 2d 859, 865-66, 650 N.W.2d 81 (Wis. Ct. App. 2002)
- ^{lx} *Id.* at 866-69.
- ^{lxi} WIS. STAT. § 66.0217(11)(c) (2007).
- ^{lxii} WIS. STAT. §§ 66.0217(11); 893.73(2) (2007).
- ^{lxiii} WIS. STAT. § 59.69(7) (2007).
- ^{lxiv} WIS. STAT. § 62.23(7)(a) (2007).
- ^{lxv} WIS. STAT. §§ 62.23(7)(b),(c) (2007); *But see Step Now Citizens Group v. Town of Utica Planning and Zoning Committee*, 2003 WI App 109; 264 Wis. 2d 662 (Ct. App. 2003) (holding that comprehensive plans are advisory until January 1, 2010, unless explicitly referenced in local zoning code).
- ^{lxvi} WIS. STAT. § 62.23(7a)(b) (2007).
- ^{lxvii} **CITE Town Powers info**
- ^{lxviii} WIS. STAT. §§ 62.23(3)(a);(7)(e)(1); *but see Bell v. City of Elkhorn*, 122 Wis. 2d 558, 569, 364 N.W.2d 144 (Wis. 1985) (holding that a set of zoning codes can serve as a “master plan”).
- ^{lix} See WIS. STAT. § 62.23(1)(a) (2007).
- ^{lxx} WIS. STAT. § 62.23(1)(a);(7)(a) (2007).
- ^{lxxi} WIS. STAT. § 59.69(4) (2007).
- ^{lxxii} WIS. STAT. § 59.692 (2007).
- ^{lxxiii} BRIAN OHM, *supra* note 24, at ch. 6, § 1.1.2.
- ^{lxxiv} WIS. STAT. 59.69(5)(e)3 (2007).
- ^{lxxv} WIS. STAT. §§ 60.10(2)(c), 60.22(3), 60.62(1) (2007).
- ^{lxxvi} BRIAN OHM, *supra* note 24, at ch. 6, § 1.1.2.
- ^{lxxvii} See *id.*, WIS. STAT. § 60.62(3).
- ^{lxxviii} WIS. STAT. § 62.23(7)(a) (2007).
- ^{lxxix} The Wisconsin State Law Library has collected links to most of the local ordinances that are available online. <http://wsll.state.wi.us/ordinances.html>. If your ordinances are not accessible, contact your local County/City/Village/Town Clerk and ask to see the zoning ordinances.
- ^{lxxx} The Wisconsin State Law Library has collected links to most of the local ordinances that are available online. <http://wsll.state.wi.us/ordinances.html>
- ^{lxxxi} WIS. STAT. § 62.23(7)(d)1 (2007)..
- ^{lxxxii} *Oliveira v. City of Milwaukee*, 242 Wis. 2d 1, 16; 624 N.W.2d 117, 123 (2001).
- ^{lxxxiii} WIS. STAT. § 62.23(7)(d)1 (2007).
- ^{lxxxiv} WIS. STAT. § 62.23(7)(d)1.
- ^{lxxxv} WIS. STAT. § 62.23(7)(d)1,2 (2007).
- ^{lxxxvi} See BRIAN OHM, *supra* note 24, at ch. 6, § 2.3.2.
- ^{lxxxvii} WIS. STAT. § 62.23(7)(d)2m (2007).
- ^{lxxxviii} See WIS. STAT. § 59.69(1)(counties); 62.23(7)(a)(cities).
- ^{lxxxix} *Olson v. Rothwell*, 28 Wis. 2d 233, 239, 137 N.W.2d 86 (Wis. 1965); see *i.e. Donaldson v. Bd. of Comm'rs*, 272 Wis. 2d 146, 194, 680 N.W.2d 762 (Wis. 2004).
- ^{xc} *Sills v. Walworth Co. Land Mgmt. Comm'n*, 254 Wis. 2d 538, 549, 648 N.W.2d 878 (Ct. App. 2002).
- ^{xci} See BRIAN OHM, *supra* note 24, at ch. 6, § 2.4.
- ^{xcii} *Step Now Citizens Grou*; 264 Wis. 2d at 680.
- ^{xciii} *Id.*
- ^{xciv} WIS. STAT. § 62.09(8)(c) (2007).
- ^{xcv} WIS. STAT. § 59.17(6) (2007); see *Schmeling v. Phelps*, 212 Wis. 2d 898, 908-10; 569 N.W.2d 784 (Ct. App. 1997.)

^{xv} See WIS. STAT. § 806.04 (2007); see also *Village of Slinger v. City of Hartford*; 256 Wis. 2d 859, 865, 650 N.W.2d 81 (Ct. App. 2002); see also *Lake Country Racquet Club, Inc. v. City of Hartland*; 259 Wis. 2d 107, 116, 665 N.W. 189 (Ct. App. 2002).

^{xvii} See generally *Village of Slinger*; 256 Wis. 2d 859; see also *Lake Country Racquet Club, Inc. v. City of Hartland*; 259 Wis. 2d 107, 116.

^{xviii} See generally *Village of Slinger*; 256 Wis. 2d 859; see also *Lake Country Racquet Club, Inc. v. City of Hartland*; 259 Wis. 2d 107, 116; see also *Boerschinger v. Elkay Enters., Inc.* 32 Wis. 2d 168, 170-71, 145 N.W.2d 108 (Wis. 1966).

^{xix} See generally *Village of Slinger*; 256 Wis. 2d 859; see also *Lake Country Racquet Club, Inc. v. City of Hartland*; 259 Wis. 2d 107, 116; see also *Boerschinger v. Elkay Enters., Inc.* 32 Wis. 2d 168, 170-71, 145 N.W.2d 108 (Wis. 1966).

^c *Village of Slinger*, 256 Wis. 2d. at 866-67.

^{ci} See *Snyder v. Waukesha Co. Bd. of Zoning Adjustment*, 74 Wis. 2d 468, 476, 247 N.W.2d 98 (Wis. 1976; see also *Edward Kraemer & Sons, Inc. v. Sauk Co. Bd. of Adjustment*, 183 Wis. 2d 1, 8, 515 N.W.2d 256 (Wis. 1994).

^{cii} See *Kraemer & Sons*, 183 Wis. 2d at 7 (citing *Smart v. Dane Co. Bd. of Adjustments*, 177 Wis. 2d 445, 452, 501 N.W.2d 782 (1993)).

^{ciii} *State ex rel. Brooks v. Hartland Sportsman's Club*, 192 Wis. 2d 606, 616, 531 N.W.2d 445 (Ct. App. 1995).

^{civ} *State ex rel. Skelly Oil Co. v. Common Council*, 58 Wis. 2d 695, 701, 207 N.W.2d 585, 587 (1973).

^{cv} See *Kraemer & Sons*, 183 Wis. 2d at 18-19.

^{cvi} *Id.*

^{cvi} *Id.*; see also *Fabyan v. Waukesha County Bd. of Adjustment*, 246 Wis. 2d 851, 859-61, 632 N.W.2d 116 (Ct. App. 2001).

^{cvi} *Kraemer & Sons*, 183 Wis. 2d at 14.

^{cix} *Id.* at

^{cx} CITE

^{cx} CITE Wis. Stat. 62

^{cxii} See *Weber v. Town of Saukville*, 209 Wis. 2d 214, 237-38, 562 N.W.2d 412, 418 (1997).

^{cxiii} *Id.* at 237-240.

^{cxiv} CITE

^{cxv} See *Bettendorf v. St. Croix Co. Bd. of Adjustments*, 224 Wis. 2d 735, 740, 591 N.W.2d 916, 919 (Ct. App. 1999).

^{cxvi} CITE

^{cxvii} *Arndorfer v. Sauk County Bd. of Adj.*, 162 Wis. 2d 246, 253-56, 469 N.W.2d 831, 834-35 (1991); *State v. Winnebago Co.*, 196 Wis. 2d 836, 843, 540 N.W.2d 6, 6-7 (Ct. App. 1995).

^{cxviii} *Arndorfer v. Sauk County Bd. of Adj.*, 162 Wis. 2d at 258.

^{cxix} *State ex rel. Ziervogel v. Washington Co. Bd. of Adjustment*, 269 Wis. 2d 549, 555; 676 N.W.2d 401, 403 (2004).

^{cxx} *Id.*

^{cxxi} *Id.*; see also *State ex rel. Markdale Corp. v. Bd. of Appeals*, 27 Wis.2d 154, 163, 133 N.W.2d 795, 799 (1965); *Winnebago Co.*, 196 Wis. 2d at 843; see *State v. Ozaukee County Bd. of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47, 51 (Ct. App. 1989).

^{cxvii} See *Winnebago Co.*, 196 Wis. 2d at 844-45.

^{cxviii} *Id.*

^{cxviii} *State ex rel. Ziervogel*, 269 Wis. 2d at 556-57 (citing *Snyder*, 74 Wis. 2d at 475).

^{cxv} *Id.* at 563-64.

^{cxv} *Snyder*, 74 Wis. 2d at 476

^{cxvii} See *id.*

^{cxviii} *Winnebago Co.*, 196 Wis. 2d at 845-46.

^{cxix} *Id.*

^{cxix} *Id.*

^{cxv} See *Arndorfer*, 162 Wis. 2d at 256.

^{cxvii} See *Goldberg v. Milwaukee Bd. of Zoning Appeals.*, 115 Wis. 2d 517, 522, 340 N.W.2d 558 (Ct. App. 1983).

^{cxviii} WIS. STAT. § 62.23(7)(e)7 (2007).

^{cxv} *Nodell Inv. Corp. v. Glendale*, 78 Wis. 2d 416, 254 N.W.2d 310, (Wis. 1977).

^{cxv} See *League of Women Voters, Inc. v. Outagamie County*, 113 Wis. 2d 313; 325 334 N.W.2d 887 (1983); *State ex rel. First Nat. Bank v. M & I Peoples Bank*, 82 Wis. 2d 529, 542-43, 263 N.W.2d 196 (1978).

^{cxv} *Osterhues v. Bd. of Adjustment*, 282 Wis. 2d 228; 698 N.W.2d 701 (2005).

^{cxv} WIS. STAT § 62.23(7)(e)10 (2007).

^{cxv} See WIS. STAT § 62.23(7)(e) (2007).

^{cxv} See WIS. STAT. § 227.57(2007).

^{cx} See *Gill v. City and Common Council of Oconomowoc*, 2005 WI App 193; 287 Wis. 2d 132; 703 N.W.2d 383 (Ct. App. 2005) (unpublished opinion with limited precedent).

^{cx} WIS. STAT. §§ 62.23(5), 236.01 *et. seq.* (2007).

^{exlii} *State ex rel. Zupancic v. Schimenz*, 46 Wis.2d 22, 174 N.W.2d 533 (1970); see BRIAN OHM, *supra* note 24, at ch. 6, § 2.5.2.

^{exliii} *See Konkel v. Delafield*, 68 Wis.2d 574, 229 N.W.2d 606 (1975).

^{exliv} *See Howard v. Village of Elm Grove*, 80 Wis.2d 33, 257 N.W.2d 850 (1977); see BRIAN OHM, *supra* note 24, at ch. 6, § 2.5.2.

^{exlv} CITE