

Midwest Environmental
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Big-Box Ordinance and Conditional Use Permit (CUP)
Tool-Kit

Authors:

Brent Denzin

Attorney

[Equal Justice Works Fellow](#)

Erin Elizabeth Hupp

Law Clerk at Midwest Environmental Advocates, 2006

American Planning Association, Planning and Law Division Fellow, 2006

Masters in City and Regional Planning and Juris Doctor Candidate

University of North Carolina at Chapel Hill, 2008

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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.

BIG BOX ORDINANCE AND CONDITIONAL USE PERMIT
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I. INTRODUCTION

A well-constructed big-box ordinance equips a community with tools to make educated decisions about big-box development in their area. Having a big-box ordinance in place *before* a big-box retailer applies for a permit ensures that your government is aware of your community's values and standards when processing the big-box retailer's application. Prevention is the best protection against unwise land use.

This section of the tool-kit includes guidelines that a community should consider when drafting a big-box ordinance. In addition to the components addressed below, take time to protect your ordinance from efforts to avoid its requirements. Make sure that your big-box ordinance is very clear and precise. Include a glossary so that there is no mistake as to what the ordinance intends. The more measures you include, the stronger your big box ordinance will be. Make sure you include both case-specific conditional use permit requirements and clearly defined size caps. A diverse and complete big-box ordinance will set basic standards while reserving authority to address site-specific impacts that threaten community vision and land use goals.

Big-box ordinances are not the only way to ensure wise land use planning in your community. You may also promote smaller businesses and smart growth in your community's Zoning Ordinance or Comprehensive Plan. For example, Turlock, California, amended their ordinance to include neighborhood stores.¹

II. DEFINITION OF A BIG-BOX

A. Link Definition of Big-Box Store to Conditional Use Permits

While it may seem obvious to those drafting the ordinance, make sure to stress the need to specify the big-box development as a “conditional use” subject to a conditional use hearing process.² Conditional use permit applications should include a detailed map and description of the development. The conditional use permit application should be subject to individual review and consideration by the planning commission.

Example: Turlock, California, amended its ordinance to specify that a conditional use permit (CUP) is required for certain large-scale retail stores (discount stores and discount clubs).³

Example: Mount Shasta, California, requires proposals for stores over 20,000 square feet to obtain a conditional use permit.⁴

B. Including a Size Cap

Size caps are a clear-cut way to create a standard for big-box retail in your area. The size cap is recognition that, at a certain size, retail establishments simply exceed the needs of the community and will start to drain its resources. Size caps are vital to any effective ordinance.

Without these caps, it is likely that your community will end up with a 400,000 square foot store. That is not the protection your community deserves.

The exact size used in the ordinance is determined by the community. Many communities select a size between 25,000 and 80,000 square feet. To give you some perspective, here are some average sizes for typical developments provided by the New Rules Project in Minneapolis, MN:

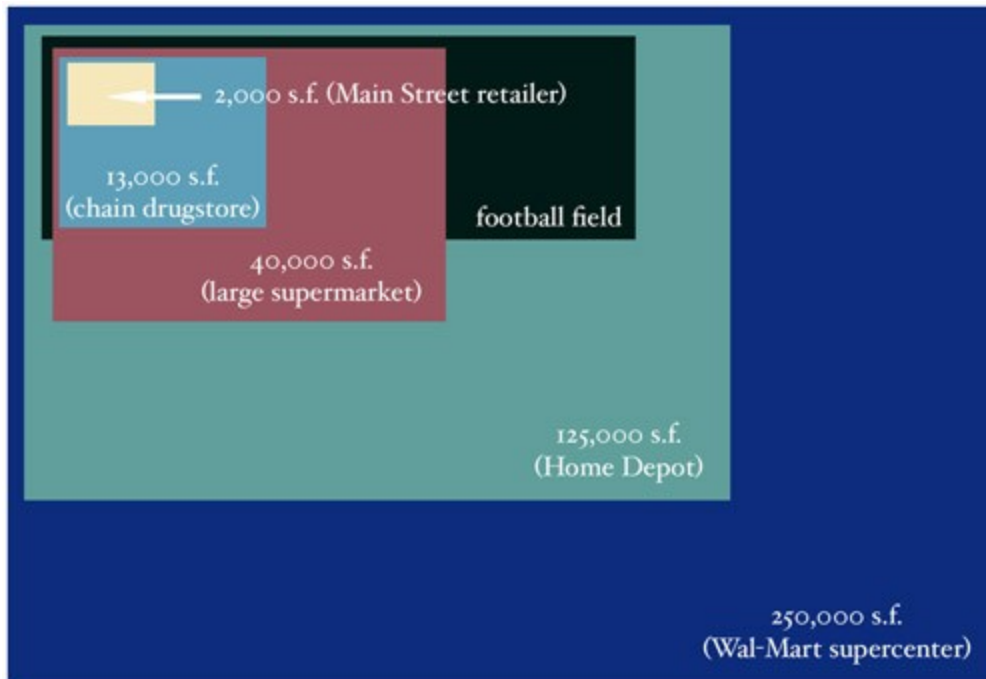


Chart: A normal downtown retailer is 2,000 sq. ft.; a large supermarket is 40,000 sq. ft.; a football field is 57,600 sq. ft.⁵ Astonishingly, some big-box developments range from 125,000 - 200,000 sq. ft.⁶

Wal-Mart and Target are currently building "supercenters," which are 180,000 to 250,000 square feet, or between 4.1 to 5.7 acres.⁷ Other earlier-generation big box retail stores such as Wal-Mart outlets, Home Depot, Lowe's, Office Depot, and Bed Bath & Beyond, have sizes ranging from 60,000 to 140,000 square feet.⁸ Barnes & Noble and Borders Books stores range from 25,000 to 45,000 square feet and free-standing chain drugstores such as Walgreens are usually from 11,000-15,000 square feet.⁹

- **TIP:** Include language that does not allow the city council simply to change the square footage limit of the big-box cap, thereby severely weakening the big-box ordinance. In other words, it is a straightforward process to alter the square footage limit in a big box ordinance. This vulnerability underscores the need for other conditional requirements in your big box ordinance. For example, including certain stormwater regulations or impervious surface limits in your big-box ordinance will

ensure that the box's impact on the community is limited should the council later decide to amend the size cap. [See the Impervious Surface Section below.](#)

Finally, your community may tailor the size cap according to land use designation. If one size does not fit all, then choose the varying size cap.

Example: Bennington, Vermont, defined a big-box as 75,000 square feet in the commercial district and 50,000 square feet in the rest of the town.¹⁰

1. Include Outlots and Multiple Retailers in the Size Cap.

Make sure that the calculated square foot size of the big-box includes outlots,¹¹ outdoor sale areas, and storage. In Calvert County, Maryland, Wal-Mart is attempting to skirt a size cap law by erecting two adjacent stores.¹² Communities can avoid this by structuring the definitions within their ordinances to treat retailers occupying multiple buildings as a single retail use subject to the size cap.

➤ **TIP:** Include multiple retailers under one size cap if applicable.

Example: In Hailey, Idaho, shopping centers with multiple tenants are allowed up to 50,000 square feet in the business zone¹³, 36,000 square feet in the limited business zone¹⁴, and 25,000 square feet in other industrial and commercial zones.¹⁵

2. Cap the Roof Size of the Big-Box

Promote big-box development that considers the "footprint," or the size of the land that the big-box occupies. A larger size big-box has more negative effects than a smaller footprint.

Example: Hailey, Idaho, limits the roof area of all retail stores to 36,000 square feet.¹⁶

Example: Monona, Wisconsin, approved a Wal-Mart Supercenter on the site of a vacant K-Mart store. Due to lack of available land, the Wal-Mart Supercenter was forced to fit a Supercenter into a 14-acre plot of land, roughly half the size of their usual sites.¹⁷

3. Consider Defining a Big-Box by the Number of Vehicle Trips it Will Generate Per Day.

Example: Greenfield, Massachusetts, defines retail that must adhere to their big -box ordinance by their square footage **OR** if they generate more than 500 vehicle trips per day.¹⁸

III. LINKING YOUR BIG-BOX ORDINANCE TO OTHER DOCUMENTS

Like other land use ordinances, the big-box ordinance should reflect a community's long-term plans and vision. The big-box ordinance is likely not the first time the community has set forth a vision for city growth. Make sure the ordinance supports this greater vision.

A. Link Big-Box Ordinance to Comprehensive and Land Use Plans

Linking the big-box ordinance to the Comprehensive and Land Use Plans legitimizes these plans, which otherwise are only advisory documents until 2010.¹⁹ This link forces the town council to consider whether the effects of the development coincide with the community's land use vision.

B. Link the Big-Box Ordinance to the Zoning Ordinances

Linking the big-box ordinance to the zoning ordinance ensures that big-box retailers conform to parking, stormwater, and other requirements set out in the zoning code.

- **TIP:** Since big-box developments are not average developments, do not treat them like average developments. Recall that a normal downtown retailer is 2,000 sq. ft.; a large supermarket is 40,000 sq. ft.; a football field is 57,600 sq. ft.; and a big-box development ranges from 125,000 - 200,000 sq. ft! Accordingly, increase the requirements set out by the zoning code and promote innovative techniques for the big-box to reduce stormwater runoff and impervious pavement in your big box ordinance. See [Impervious Pavement](#) section below.

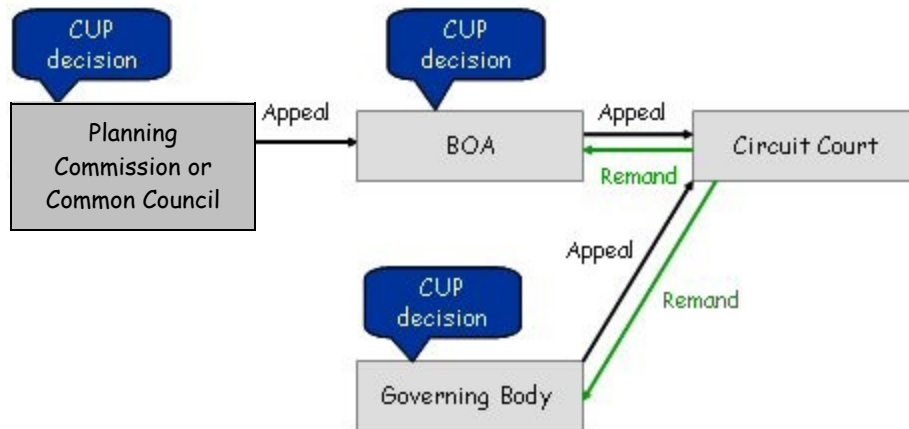
IV. SETTING CONDITIONAL USE STANDARDS

While proactive ordinances, like big-box ordinances, are the most effective way to deter big-box sprawl, even the most effective ordinances may not equip a community for all situations. If your community does not have a big-box ordinance, or if the ordinance does not cover all impacts of a big-box development, you can still take action using a Conditional Use Permit (CUP).²⁰

Zoning codes generally recognize two categories of uses that are allowed in each zoning district: 1) standard permitted uses; and 2) conditional uses. When a land use is considered a conditional use, the Applicant must receive a CUP before construction can begin. CUP applications are generally reviewed by the Planning & Zoning Committee/Commission (herein "Plan Commission") or, in rare cases, the Common Council. As part of the review, the governing body may request that the applicant satisfy conditions that address the Commission's concerns regarding the project's impact. This is a critical stage for citizen input for two reasons: 1) the CUP stage is often the last opportunity for public input in the planning process before the local government approves the development; and 2) the Plan Commission has a unique opportunity to assess and minimize impacts with CUP conditions.

Throughout this tool-kit are examples of communities that have successfully used CUP conditions to limit adverse environmental, economic, and community impacts from large developments. With the following conditions as a guide, you can get involved in the CUP hearings and make sure your Commission adequately addresses foreseeable impacts before they are imposed on your community.

Overview of the Conditional Use Permit (CUP) Process²¹



Generally, during the CUP application process, the Plan Commission must determine:

- 1) Whether the use proposed in the application will be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- 2) Whether the use will be in harmony with specific zoning conditions *and* the general purpose and intent of your community's zoning ordinances (and possibly the Comprehensive Plan/Land Use Element, depending on the locality).²²

In many cases, appropriate conditions for approval are set forth in the zoning ordinances. However, when considering a CUP application, the governing body has the legal authority to require applicants to meet additional conditions that are not explicitly listed in the ordinances, if necessary to meet the goals and purpose of the zoning code or comprehensive plan.²³

Below is a list of conditions that communities may request as part of a CUP application review. This list is not comprehensive and conditions will be more or less applicable depending on the situation. While many of the examples cite big-box ordinance requirements, these requirements can and should be imposed as a CUP conditions regardless of whether they are specifically set forth in your community's zoning ordinances.

V.REQUIRING A SITE PLAN

Before the Plan Commission can evaluate a project's impact, it needs a detailed site plan that expands beyond the building design. Among other details, the site plan should identify environmental characteristics of the site and surrounding area, the site's drainage pattern, and specific landscaping features.

Example: Homer, AK requires that a site plan show "the location of setbacks, easements, all existing and proposed buildings and structures, access points, buffering, vehicular and pedestrian circulation patterns, parking, loading and delivery areas, mechanical equipment, drainage, landscaping, and the specific location of the use or uses of the development, elevation plans of all proposed structures, and other information necessary to establish that the requirements will be met."²⁴

VI.LIMITING IMPERVIOUS PAVEMENT

Any effort to reduce unnecessary impacts from big-box retail should begin by addressing the sprawling, one-level, big-box design. Big-box developments often replace undeveloped open spaces with 20-40 acres of impervious surface (i.e. asphalt, roofing). The new parking lots and roofs create approximately 16-times more polluted runoff than the former open space, nearly all of which ends up in nearby waterways.²⁵ Without treatment, pollutants like oil, grease, phosphorus, road salt, and dirt, can seriously impair otherwise healthy water bodies. Partly due to the single-story big-box design, communities are paving land at a rate 3 times faster than population growth.²⁶ Consequently, increased urban runoff has become a leading cause of degradation in many waters across the country.²⁷

Additionally, impervious surfaces do not allow storm water to filter back into the soil and replenish your community's groundwater supply. The loss of groundwater in addition to the direct impact on surface waters creates a serious impact on your local resources. In many communities, groundwater supply is already a serious concern, yet the government continues to allow infiltration areas to be replaced by parking lots.

To be sustainable, site designs must attempt to maintain as much of the natural function of the land as possible. The development plan should strive to be "hydrologically-neutral," meaning that post-development infiltration and runoff volumes are equal to the pre-development rates and stormwater is effectively managed on-site. On-site storm water management restores the water cycle, replenishes the groundwater, and reduces runoff to nearby water bodies. Additionally, on-site infiltration saves community costs associated with large catch basins, pipes, and off-site storage ponds to control stormwater.²⁸

Finally, sprawling big-box footprints lead to sprawling commercial districts. Big-box districts often dwarf downtown areas due to their one-level design and extensive surface parking. As commercial developments extend farther from residential areas, the public is forced to drive farther to shop. Currently, the distance people drive on a daily basis is increasing 3-times faster than would be expected given population growth.²⁹ In addition to the unnecessary increase in air

pollution, which already violates EPA standards in at least 10 Wisconsin counties,³⁰ the public is wasting gas driving to buy everyday goods in distant locations.

Given these goals, Plan Commissions should require applicants to evolve from the one-level building and surface parking designs and take steps to meet the project's objectives while minimizing impervious surface. For example, the following conditions and incentives have allowed other communities to shrink big-box developments and promote sustainable, controlled growth:

A. Multi-level, Structured Parking

Communities can start reducing impervious surfaces by eliminating the outdated, sprawling big-box parking lot design. Structured parking helps reduce environmental impacts and preserve open space by providing the same number of parking places on a smaller footprint. For example, putting the parking beneath the store eliminates roughly half the store's impervious surface.³¹ Turning a 30-acre big-box development into a 15-acre big-box development dramatically reduces the amount of polluted runoff that is sent into our rivers, lakes and streams. More importantly, this smaller footprint raises possibilities for "infill" development in existing, vacant commercial areas.³²

Fortunately, surface parking is not a necessary part of the big-box package. Big-box developments can and should use underground parking and/or parking structures to meet parking needs. Plan Commissions do not need to look far to find big-box retailers that are fitting into smaller spaces with structured parking.³³ Yet, outdated designs continue to circulate around Wisconsin. To protect the community from unnecessary sprawl and stormwater impacts, communities should condition CUP approval on multi-level, structured parking.

Example: In Monona, WI, the City approved a Wal-Mart Supercenter on the site of a vacant K-Mart store. Due to lack of available land, the Wal-Mart Supercenter was forced to fit a 200,000-square foot Supercenter into a 14-acre plot of land, roughly half the size of their usual sites. To fit into this smaller footprint, the Monona Wal-Mart Supercenter uses underground parking. The use of underground parking in Monona, WI, shows that Wal-Mart and other big-box retailers have the ability to eliminate the above-ground parking lots.³⁴

B. Require Smaller Parking Lots

In addition to underground/structured parking lots, communities may require the developer to reduce the size of their parking lot by minimizing the size of each stall and/or number of total parking stalls. To minimize parking lot size, communities can use actual average parking demand instead of the maximum peak season rate. Alternatively, your community can follow the standard published by the Institute for Transportation Engineers (ITE). ITE standards require that this would be no more than 6.25-7 spots per 1,000 sq. ft.³⁵

Example: Oregon, WI, will be proposing a paved parking ratio of no more than 120% of the minimum parking ratio identified by ITE.³⁶

Example: Stoughton, WI, requires a maximum of four parking spaces/1,000 square feet of gross floor area for buildings 25,000-400,000 square feet.³⁷

- **TIP:** Check to make sure that the developer is not using the highest number in the local zoning code or ITE's range of recommended parking lot sizes. While the trend toward larger sport utility vehicles (SUVs) is often cited as a reason to use larger parking stalls, stall width requirements in most local parking codes are much larger than the widest SUVs.³⁸

C.Require that Parking Lots be Distributed Around the Building

The CUP may require that parking lots be distributed around the structure so that distance between the building and the sidewalk is reduced. By bringing the building closer to the road, the design encourages pedestrian traffic and will likely lower the footprint (scale) of the building.

Example: Wauwatosa, WI, requires that no more than 30% of the parking lot be located on any side of the big-box that is facing the street unless approved by the Plan Commission.³⁹

Example: Homer, AK, does not allow more than 50% of the parking between the front facade of the building and abutting streets or adjacent arterials.⁴⁰

D.Give Incentives for Pervious Pavement

Big-box stores can limit impervious asphalt surfaces by replacing portions of the parking lot with porous pavement. Porous pavement is made with asphalt, gravel, or concrete which allows water to filter through underlying soil and replenish groundwater. Often porous pavement is used in areas of the parking lot that do not receive heavy traffic, such as parking stalls, cart areas and cross walks. Due to the pollutants found in parking lots, porous pavements may not be appropriate in areas immediately adjacent to sensitive water bodies, water supplies, or in areas with high water tables.⁴¹ Nevertheless, when used in the right locations, porous pavement can be a great way to limit storm- water runoff.

Example: Wal-Mart's experimental stores in Aurora, CO, and McKinney, TX, are test spots for porous pavement.⁴²

Example: Philadelphia, PA, is using porous pavement to create places (for example, public basketball courts) where rain will be readily absorbed into the ground.⁴³

E.Give Incentives for Big-Box Retailers to Install Green Roofs, Rain Gardens, and other Low-Impact Development Designs.

Low-impact development (LID) designs should be a condition of approval for large retailers. EPA has identified a long list of LID designs that reduce impervious surfaces.⁴⁴ Retailers can

use rain gardens, bio-swales and other natural features to absorb stormwater before it enters a detention pond. Finally, rain barrels and cisterns allow big-box retailers to save money and protect the environment by re-using stormwater for non-potable uses.

Some LID designs have a variety of secondary benefits. For example, green roofs (or “roof gardens”) not only reduce stormwater,⁴⁵ but also reduce heat from paved surfaces, regulate the building’s energy costs (heating and cooling costs), protect the roof membrane, resulting in a material lifespan that is twice as long as conventional roofs, and provide an aesthetically pleasing alternative to large warehouse roofs.⁴⁶

Example: Chicago, IL, provides incentives to developers who install green roofs.⁴⁷

Example: Minneapolis, MN, made incentives for green roofs, rain gardens, and other LID designs when it restructured its stormwater utility fees in March 2005.⁴⁸

F.Promote Mixed-Use Development

As demonstrated in many older city centers, mixed use developments can be a great way to reduce our need for sprawling parking lots. Instead of separating the places we live from the goods and services we need, mixed-use developments include residences, restaurants, movie theaters, and other retail stores within walking distance from your neighborhood. By reducing our reliance on cars for everyday goods, mixed-use developments are a convenient way to downsize parking lots and promote sustainable growth.

Example: Duany, Plater-Zyberk & Co. created a mixed-use plan for Wal-Mart in Pass Christian, Alabama. The Pass Christian design would call for encircling the store’s parking lot with multi-level retail shops and apartments as well as minimizing the overall footprint of the store. This parking lot formation would hide the parking lot from view from the street and provide Wal-Mart a base of potential shoppers in adjacent apartments.⁴⁹

VII.LANDSCAPING

As discussed above, there are a variety of landscaping options that can actively reduce impacts from big-box development. For example, rain gardens and bioswales are vegetated channels that slow down and help infiltrate storm water runoff before it is drained to a detention pond.⁵⁰ These natural areas should be interspersed throughout the parking lot to help break up large areas of impervious pavement and allow storm water to infiltrate the ground, replenishing groundwater rather than running off-site. Planted bioswales and berms also reduce the temperature of the big-box site, by removing heat-absorbing asphalt.

Example: Chicago's landscape ordinance requires any new parking lot of 3,000 square feet or more to install landscape islands and trees within the lot.⁵¹

Example: Wal-Mart's experimental environmentally sustainable big-box retail store in McKinney, TX, includes bioswales and berms.⁵²

Example: Homer, AK, requires buffers and landscaped islands with native vegetation.⁵³

Example: Stoughton, WI, requires developers to plant certain species of trees on-site.⁵⁴

VIII. LEED CERTIFICATION

LEED® (Leadership in Energy and Environmental Design) is a green Building Rating System® that is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings. While LEED – RETAIL® standards are still in their pilot phase, LEED standards for other categories of design can provide an effective standard for promoting green, energy efficient big-box designs.⁵⁵ For example, big-box retailers could adhere to the LEED-NC® for new construction and major renovations.⁵⁶

To comply with LEED® standards, a developer is given a checklist at the time s/he applies for certification. A LEED®-accredited professional then utilizes the LEED® standards, as governed by the U.S. Green Building Council, to evaluate the building. The checklist includes criteria such as the reuse of building material, natural lighting, efficient energy use, and low-emitting materials. For those criteria that are not met, the Plan Commission and Developer can analyze the costs and benefits of meeting such criteria.⁵⁷

There are many public benefits of requiring LEED-certified buildings. Energy efficient buildings reduce the community's need for energy and decrease environmental impacts of generating energy.⁵⁸ Additionally, private sectors stand to benefit from LEED certification because 1) LEED buildings pay for themselves within four years with a 25%-40% return on their investment, and 2) LEED certified buildings have an average bottom line savings of 30% energy savings, 30-50% water savings, and 50-97% waste cost savings.⁵⁹

Example: Madison, WI, attempted to require Wal-Mart Stores to build under LEED standards. Wal-Mart fought the requirement but the City would not budge. Wal-Mart in turn declined to develop a retail store in Madison.⁶⁰

Example: For every rezoning application involving a large development area, the city of Chamblee, Georgia's new zoning ordinance will require a LEED analysis for informational purposes. However, Chamblee's new ordinance does not allow lack of LEED certification to be a factor in the rezoning decision.⁶¹

Example: The City of Chicago's Mayor Daley mandated that all new municipal buildings in Chicago be LEED certified.⁶²

IX. IMPACT FEES

Contrary to conventional wisdom, not all developments create net economic benefits for the community in the long-run. In fact, additional development can be a burden on existing communities if the costs associated with expanded police and fire services, road expansion and maintenance, increased school enrollment, stormwater control, and extension of sewer and water lines outweigh the tax benefits. Additionally, new developments may degrade environmentally sensitive areas, increase our reliance on car travel, or create other long-term costs. After the big-box is built, communities are often left to take necessary, and often expensive, measures to address these impacts.

Impact fees transfer these infrastructure costs directly to the developer and/or property owner who creates the additional costs. Impact fees can be used as long as they are in an amount that does not exceed the proportionate share required to serve the new development.⁶³ Impact fees are used to relieve governments from bearing the initial costs of new development, not to impose an arbitrary charge for development.⁶⁴

- **TIP:** Municipalities often use impact fees to install and maintain stormwater management facilities on newly developed sites in Wisconsin.⁶⁵

In Wisconsin, communities may collect impact fees for the following land uses:^{66/67}

- Facilities for collecting and treating sewage
- Facilities for collecting and treating storm and surface waters
- Facilities for pumping, storing, and distributing water
- Parks, playgrounds, and other recreational facilities
- Solid waste and recycling facilities
- Fire protection facilities
- Law enforcement facilities
- Emergency medical facilities and libraries.

- **TIP:** Due to statutory time limitations for collecting fees,⁶⁸ make sure that permits are conditioned on payment of the impact fee.
- **TIP:** Propose that your community enact an ordinance that allows impact fees for the above-listed facilities. If your community already has such an ordinance, advocate that the Plan Commission include impact fees in the CUP.

Example: Londonderry, NH, enacted an impact fee ordinance that applies to all new development.⁶⁹ According to this kind of ordinance, a big-box retailer could be required to pay impact fees for expanding water and sewer capacity.

X.REQUIRING A MANDATORY COMMUNITY IMPACT ANALYSIS

Big-box developments have an impact on the entire community's economy, traffic, and environment. Unfortunately, many Plan Commission reviews fail to consider impacts outside of the immediate site area. A Community Impact Analysis is a collection of separate economic, environmental, and traffic impact studies that analyze the development's community-wide impacts. The community-based, comprehensive analysis allows the Plan Commission to evaluate whether a proposed development will promote real growth in the community or offset short-term growth with long-term costs.

Community Impact Analyses should include an independent analysis of the economic, fiscal, and community impacts of big-box development.

- **TIP:** Often, big-box impacts are regional. Consider including a region-wide impact analysis that the Regional Plan Commission needs to approve before the applicant proceeds with their application. For example, the Cape Cod Commission requires a regional planning agency to approve or reject proposals for new construction larger than 10,000 square feet and changes of use for commercial sites that exceed 40,000 square feet. This review process includes a public hearing.⁷⁰ Similarly, New Jersey just introduced a bill to require regional impact analyses.⁷¹

A.Communities Should Independently Select Consultants

Independently selected consultants are more likely to conduct impartial impact analyses than consultants hired by the applicant. To avoid biased results, require that the municipality select the consultant.

B.Require Developers to Pay for the Impact Analysis

While independently selected consultants are necessary, communities should not have to bear the cost of an impact analysis. The developer is applying for a permit and, therefore, the developer bears the burden of convincing the governing body that the project will meet zoning regulations and protect the public's health and welfare. Therefore, it seems logical that the applicant pay for the impact studies.

Example: Bennington, VT, requires a Community Impact review for stores over 30,000 square feet that must be conducted by an independent consultant chosen by the city, and the developer pays costs.⁷²

Example: Middletown, RI, requires that developers submit detailed impact statements and pay a fee to cover the town's cost of hiring consultants to review the impact statements and offer independent analyses. For shopping centers and other commercial development, the fee is \$100 per 1,000 square feet of gross floor space.⁷³

C.Require Developers to Meet Specific Requirements with the Impact Analysis

To ensure that the study will include all necessary information for the council to make an educated decision, the Plan Commission should set clear directives for each impact study.

Example: Homer, AK, requires the following data:⁷⁴

- Estimated cost of necessary infrastructure expansion;
- Net impacts on current business district;
- Net change in sales tax and property tax base, revenues, and overall land values; and
- The estimated net impacts to local employment, wages and salaries, locally retained profits, property taxes, and sales taxes.

Example: Wauwatosa, WI, requires:⁷⁵

- Traffic and parking conditions on site and surrounding area;
- Municipal utilities and services;
- The physical and ecological characteristics of the site and the surrounding land, including wetlands, floodplain vegetation, wildlife habitat, and other environmental conditions;
- The scenic, historic, and archeological character of the community;
- The economic impact of the project on local businesses and residents, including number and types of jobs created, and amount of local labor to be used; and
- The amount, type, and location of potential spin-off development, impact of changing land use patterns and potential for development pressure on surrounding neighborhoods.

D.Include 10-20 year Horizon for Community Impact Study

Some big-box impacts are not felt until a few years after they have moved into the community. Make sure that the CUP is conditioned on Community Impact Studies that assess long-term impacts.

Example: Homer, AK, requires a 10-year horizon.⁷⁶

XI.REQUIRE A MANDATORY ENVIRONMENTAL IMPACT ANALYSIS

Whether part of a Community Impact Study or a separate process, all governing bodies should analyze the impact that a proposed development will have on your community's natural resources and environmental quality. Big-box development accelerates sprawl, increases your community's reliance on cars, and paves over large areas of land for one-level buildings and surface parking lots. Overtime, these sprawling developments can degrade your community's air and water quality and deplete groundwater resources. Governing bodies have the authority and responsibility of minimizing impacts to public health and the environment by making educated development decisions. To make responsible development decisions, communities need to take an accurate look at the anticipated environmental impacts of each development decision.

- **TIP:** Big-box developments should not be viewed in a bubble. If there are other sprawling parking lots in the area, these areas should be included in the environmental impact analysis. Additionally, expected future growth should be included. After one farm is turned into a commercial center and the infrastructure shifts to service the area, the surrounding property will likely follow. A realistic look at environmental effects will include the possibility of additional parking lots on neighboring land as a likely secondary impact of placing the first big-box in this area.

XII. REQUIRE A MANDATORY TRAFFIC DEMAND MANAGEMENT REPORT (TDM) AND TRAFFIC IMPACT ANALYSIS (TIA)

Before turning farm fields into commercial centers, communities should make sure they have the infrastructure to sustain these developments over time. Big-box supercenters instantly add an estimated 11,000 new car trips to area roads every day.⁷⁷ Often, this traffic is diverted from city centers to areas that had not previously served heavy traffic flow. The increased traffic can turn rural and small downtown streets into traffic jams with new cars that are heading to and from the new big-box retailer.

As a result, big-box developments can dramatically alter a community's way-of-life. Once walkable streets often start to resemble highway districts and quiet nights are replaced by 24-hour activity. Additionally, increased traffic may pose a threat to public safety and welfare. Increased traffic lowers air quality, increases traffic accidents, and discourages healthy forms of transportation, like biking and walking.

CUP conditions should be used to maintain a healthy community and protect the community's way-of-life. First and foremost, the Plan Commission should require a Traffic Impact Analysis (TIA) and Transportation Demand Management Report (TDM), which analyze the impacts that will stem from increased traffic in the area. These reports generally recommend specific strategies to help maintain efficient, sustainable use of roadways. These strategies may improve mobility and minimize the negative impacts of vehicular travel by modifying travel behavior around development.

To protect the community, the Plan Commission can condition CUP approval on the developer's ability to maintain an acceptable "level of service" for all roadways affected by the increased traffic.⁷⁸ Level of Service (LOS) is a measurement used by the Institute of Traffic Engineers to evaluate traffic flow. LOS is evaluated using a range from A to F, with LOS A representing the best traffic operating conditions because there is little or no delay and LOS F characterizing the worst conditions with significant delay. LOS A through D are usually considered acceptable, and LOS E is usually considered representative of conditions where improvements are needed. An operating condition of LOS F is unacceptable and improvements are required. Specifically, LOS criteria for traffic signals are stated in terms of the average control delay per vehicle, typically for a 15-minute analysis period. For example:

LEVEL OF SERVICE CONTROL DELAY PER VEHICLE FOR SIGNALLED INTERSECTION (sec.):⁷⁹

- A: Less than or equal to 10.0**
- B: 10.1 to no more than 20.0**
- C: 20.1 to no more than 35.0**
- D: 35.1 to no more than 55.0**
- E: 55.1 to no more than 80.0**
- F: 80.1 and greater**

LEVEL OF SERVICE CONTROL DELAY PER VEHICLE FOR UNSIGNALLED INTERSECTION (sec.):⁸⁰

- A: Less than or equal to 10.0**
- B: 10.1 to no more than 15.0**
- C: 15.1 to no more than 25.0**
- D: 25.1 to no more than 35.0**
- E: 35.1 to no more than 50.0**
- F: 50.1 and greater**

Sustainable communities grow over time, not overnight. Before adding 11,000 car trips to certain areas of the community, the Plan Commission should decide whether the size and location of the proposed development fits into the existing infrastructure. CUP permits should be conditioned on a traffic study and a plan to take all appropriate measures required to address traffic impacts on the area. If your community's infrastructure cannot handle 11,000 new car trips, the Plan Commission can push a smaller development or different location. Ultimately, local governments can use these traffic studies to plan commercial districts. Communities can save infrastructure costs and protect existing business by expanding the existing commercial district instead of creating new districts for big-box development

Example: Madison, WI, requires a Traffic Demand Management Report (TDM) for a store with more than 40,000 sq. ft. or more than 100 employees.⁸¹

- **TIP:** Ask your planning commission to require a level of service C or better (i.e., A, B, or C).
- **TIP:** Tell your planning board that they should prohibit any single commercial development that will incrementally increase the existing level of traffic on affected roadways by more than 5%.⁸²

XIII.REQUIRE ACCESS TO ALTERNATIVE MODES OF TRANSPORTATION

A.Require Bicycle and Pedestrian Facilities

Big-box developments are built around cars. Large parking lots and multi-lane access roads create an environment where bikers and walkers are discouraged. If your community is concerned with active living and accessibility of commercial development, ask your Plan Commission to include conditions for pedestrian and bicycle access in the CUP process.

Example: Stoughton, WI, includes a clause in its big-box ordinance that requires bicycle parking on site, pedestrian facilities, and connections to adjacent properties. According to the ordinance, "The development shall provide secure, integrated bicycle parking at a rate of one bicycle rack space for every 50 vehicle parking spaces. ... The entire development shall provide for safe pedestrian and bicycle access to all uses within the development, connections to existing and planned public pedestrian and bicycle facilities, and connections to adjacent properties."⁸³ Whether or not a big-box ordinance exists, this requirement can be imposed as a CUP condition to protect your community from traffic impacts.

Example: Wauwatosa, WI, requires, "Continuous internal pedestrian walkways, no less than six feet in width shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all principal buildings on the site."⁸⁴

- **TIP:** Although the above clauses are a good start, accessibility is often dependent on site location. Advocate for smaller footprints and site location that foster bicycle and pedestrian access within the downtown area of your community.

- **TIP:** Pedestrian-scaled developments also promote non-vehicle traffic. As suggested above, Plan Commissions can encourage pedestrian travel by removing large parking lots and placing stores closer to roadways and sidewalks.

B.Require Public Transport Access On-site

In addition to walking and biking, commercial developments should be located near existing public transportation routes to promote mass transportation.

Example: Wauwatosa, WI, also requires that "sidewalks shall also connect the store to transit stops on or off-site and to nearby residential neighborhoods" in its big-box ordinance.⁸⁵ Again, whether or not a big-box ordinance exists, this requirement can be imposed as a CUP condition to protect your community from traffic impacts.

XIV.LIGHTING REGULATIONS

Big-box lighting is bright and usually lasts 24-hours-a-day, becoming a nuisance for adjacent landowners. A CUP can require that a big-box take steps to minimize light pollution.

Specifically, the CUP may require that big-box lighting be only a certain number of “candles” bright, restrict the height of lights, or require light hoods.

Example: Stoughton, WI, requires a maximum brightness: "At a minimum, as measured over ambient lighting conditions on a clear night, exterior lighting shall not exceed more than one-half foot-candles above ambient levels along all property lines, and shall not exceed an average illumination level of 3.6 foot-candles nor provide below a minimum of 0.9 foot-candles in public parking and pedestrian areas." ⁸⁶ Stoughton also requires a maximum height of 20 feet for all lamp poles.⁸⁷

XV. OUTDOOR STORAGE

Big-box stores often include large outdoor storage facilities. Outdoor storage of fertilizers and other potential pollutants can create a stormwater hazard. To help prevent water pollution, communities can require big-box retailers to store pesticides and other chemicals indoors.⁸⁸

- **TIP:** Make sure that the site plan includes outdoor storage areas in their net square footage calculation.

XVI. REGULATING SIGNS

Large big-box signs and billboards often ruin scenic vistas. Communities can create scenic overlays to protect vistas in their zoning ordinances or set conditions on the number, height, size, and design of big-box signs.

Example: Stoughton, WI, limits the number of signs allowed in a big-box development. The ordinance also includes logos in their definition of a "permitted sign." Stoughton gives guidelines that the signage be "modest, coordinated, and complimentary. . ." ⁸⁹

Example: North Elba, NY, requires that applicants show that the proposed project "will not result in a clearly adverse aesthetic impact." The court upheld the planning board's decision to deny Wal-Mart a CUP based on the visual character of the town, which is dependent on tourism.⁹⁰

XVII. ELIMINATE UNNECESSARY TRAFFIC AND PARKING LOT ACTIVITY

Certain big-boxes allow campers to park in their unused parking lots overnight. Often this use creates a 24-hour strain on community's police resources. Environmentally, this extra use increases oil and grease accumulation on the parking lot, which exacerbates stormwater runoff pollution. A community can rectify this situation by including a stipulation in the CUP that excludes campers from parking overnight in big-box parking lots and requires big-boxes to post appropriate signs.

Example: Homer, AK, requires "No overnight camping" signs.⁹¹

XVIII. OUTLOTS⁹²

Good planning strategies include proposed outlots as part of the big-box, in both square footage and mobility. Outlots and buildings within outlots should not be planned as isolated parcels. The location of outlots/buildings should be carefully planned to promote pedestrian connections to other uses and buildings on the site and to minimize the need to make multiple trips within a site by car.

Example: Stoughton, Wisconsin's big-box ordinance requires that outlots be considered in the planning of a big-box development and that the outlot design be comparable with the main store.⁹³

XIX. DEVELOPER AGREEMENTS

- **Make sure that any agreement between the City and the developer lists all costs that the developer must cover.**

Example: Stoughton, WI, includes a *Developer's agreement* in their big-box ordinance. "The developer shall enter into a development agreement with the city, which shall include the payment of all utilities including but not limited to storm water, sanitary sewer, and street infrastructure, and the commitment to adhere to the policy on vacation of existing sites per subsection (20), above. Off-site improvements may also be required."⁹⁴

Additionally, make sure the community knows that the City is considering big-box development. A public hearing should be held before a City enters discussion of a developer agreement. Finally, the agreement should assure maintenance of all stormwater reduction features. The City should have on-going influence on the vast quantities of stormwater that is collected and/or treated on the site.

The agreement should not assume or promise permit approval and should be clearly enforceable in court.

XX. INCLUDE A PLAN FOR WHEN/IF THE SITE IS VACATED

Some big-boxes are known for vacating old stores and leaving the community with an empty site. Empty big-box sites can escalate the dilapidation of an area. These vacant sites waste large areas of commercial space, create an unsafe and unlit area and continue to amass large quantities of polluted stormwater.

Example: Wauwatosa, WI, requires that "if the facility is vacated, the owner or operator, within twelve months, shall submit, to the Plan Commission, a plan contemplating the

removal or reuse of the facility."⁹⁵ If the plan is not "acceptable to the Plan Commission", then the Commission can find funds to re-use the site in any way permitted by law.⁹⁶

XXI.HOURS OF OPERATION

Many big-box retailers like to be open 24 hours-a-day. Overnight stores use more energy, create around-the-clock noise, and often attract more crime.⁹⁷ To alleviate the concerns over a 24-hour retail center, communities should consider creating a condition that limits big-boxes' hours of operation.

XXII.CONCLUSION

CUP permits can be an effective tool for sustaining community standards. While communities should be addressing big-box development far before the CUP hearing, the specific conditions within CUPs can dramatically change the impact that a big-box store has on your community. Contact your local representatives and Plan Commission members and let them know that these conditions are necessary to help alleviate some of the damage caused by big-box development.

- ¹ TURLOCK, CA., MUN. CODE § 9-3-202 (2007), available at <http://www.ci.turlock.ca.us/outsidelink.asp?link=http://www.codepublishing.com/CA/Turlock> (last visited July 5, 2007) (now allowing for neighborhood stores in most residential districts).
- ² A conditional use permit (CUP) is a permit for uses that are not normally allowed in a certain site because of the community's zoning ordinance. CUPs require a public hearing and subject the applicant-developer certain conditions made by the community in order to ensure that this abnormal use of the site is for the public good. Approval of a CUP is not a change in zoning.
- ³ TURLOCK, CA., MUN. CODE § 9-3-302 (2007), available at <http://www.ci.turlock.ca.us/outsidelink.asp?link=http://www.codepublishing.com/CA/Turlock> (last visited July 5, 2007).
- ⁴ See The New Rules Project, Retail Business Size Cap and Community Impact Review – Mt. Shasta, CA, available at <http://www.newrules.org/retail/mtshasta.html> (last visited July 5, 2007).
- ⁵ The New Rules Project, How Big Is Too Big?, <http://www.newrules.org/retail/howbigisbig.html> (July 3, 2007).
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ See The New Rules Project, Bennington, Vermont Adopts Big-Box Ordinance, Jan. 27, 2005, http://www.newrules.org/retail/news_slug.php?slugid=281 (last visited July 3, 2007) (discussing the ordinance adopted in January of 2005).
- ¹¹ An outlot is a lot that is not a buildable lot at the time of subdivision development, but is an excess piece of land.
- ¹² See The New Rules Project., Wal-Mart Tries to Skirt Maryland Size Cap Law, Mar. 9, 2005, available at http://www.newrules.org/retail/news_slug.php?slugid=289 (last visited July 5, 2007).
- ¹³ HAILEY, ID., CODE, § 4.7.5(f)(2) (2007), available at http://www.haileycityhall.org/Codes_Plans/planning.asp#zoningOrd (last visited July 5, 2007).
- ¹⁴ § 4.5.5(g).
- ¹⁵ *E.g.*, §§ 4.8.5(g) (light industrial zone), 4.12.3.4(c) (service commercial industrial zone).
- ¹⁶ See NATIONAL TRUST FOR HISTORIC PRESERVATION, RETAIL CAPS FOR RETAIL GLUT: SMART GROWTH TOOLS FOR MAIN STREET 2 (2002), available at http://www.nationaltrust.org/smartgrowth/toolkit_retailcaps.pdf (last visited July, 5, 2007).
- ¹⁷ Press Release, Monona Mayor Robb Kahl, Wal-Mart Press Release (May, 2005) (on file with author).
- ¹⁸ GREENFIELD, MA., MUN. CODE § 200-7.12(B)(1) (2007) available at http://www.townofgreenfield.org/lplanoffice/pdfs_planoffice/Zoning%20Bylaw.pdf (last visited July, 5, 2007).
- ¹⁹ In Wisconsin, comprehensive plans are considered advisory until January 1, 2010. See *Step Now Citizens Group v. Town of Utica Planning & Zoning Comm.*, 264 Wis. 2d 662, 683, 663 N.W.2d 833 (Ct. App. 2003) (concluding that a land use plan is not mandatory but merely advisory).
- ²⁰ There are several steps before the CUP stage at which residents may take action to address big-box development. For example, if the retailer is interested in land outside the city limits, the land will need to be annexed and your community has a right to have its voice heard throughout the annexation process. Also, if the land is not zoned for commercial use, it will need to be rezoned and the community can become involved in the rezoning. For more information, see MEA's [Annexation Tool-Kit](#).
- ²¹ Lynn Markham, University of Wisconsin Steven's Point Center for Land Use, *New Court Decisions Regarding Conditional Use Permits*, 5 THE LAND USE TRACKER, fig. 1 (Fall 2005), available at <http://www.uwsp.edu/cnr/landcenter/tracker/fall2005/condusepermits.html> (last visited Jul. 6, 2007).
- ²² Lynn, Markham, University of Wisconsin Steven's Point Center for Land Use, *Conditional Uses: What Are They, Who Decides Them, and What Conditions May Be Included*, 3 THE LAND USE TRACKER (Spring 2004), available at <http://www.uwsp.edu/cnr/landcenter/tracker/spring2004/conditionaluses.html> (last visited Jul. 6, 2007); see *Kraemer & Sons, Inc. v. Sauk Co. Bd. of Adjustment*, 183 Wis.2d 1, 10-12; 515 N.W.2d 256 (Wis. 1994).
- ²³ *Kraemer & Sons, Inc.*, 183 Wis.2d at 10-12; see generally Office of Land and Information Services, Wis. Dep't of Admin., Wisconsin's Comprehensive Planning Legislation: Statutory Language Changes from 1999 Wisconsin Act. 9, and Technical Revisions from AB 872, signed into law by Governor Thompson on May 10, 2000 (Sept. 24, 2001), available at <http://www.doa.state.wi.us/dhir/documents/compplanstats.pdf> (last visited Jul. 6, 2007).
- ²⁴ HOMER, AK., MUN. CODE § 21.61.105(d) (2007), available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited Jul. 6, 2007).
- ²⁵ See U.S. Environmental Protection Agency, Questions About Your Community: Which has the worst per capita sprawl problem: Atlanta, Boston, or Los Angeles?, <http://www.epa.gov/region1/communities/sprawl.html> (last updated June 7, 2007).
- ²⁶ See National Resources Defense Council, "Paving Paradise: Sprawl and the Environment", <http://www.nrdc.org/cities/smartGrowth/rpave.asp>

- ²⁷ U.S. ENVIRONMENTAL PROTECTION AGENCY, POLLUTED RUNOFF (NONPOINT SOURCE POLLUTION), <http://www.epa.gov/owow/nps/Section319II/intro.html> (last visited Jul. 6, 2007) (“Today, nonpoint source pollution remains the nation’s largest source of water quality problems. . . . The most common nonpoint source pollutants are soils and nutrients that stormwater runoff picks up as it flows overland to rivers and streams[.] . . . Other common nonpoint sources pollutants include. . . salts, oil, grease, toxic chemicals, and heavy metals.”); see U.S. ENVIRONMENTAL PROTECTION AGENCY, AFTER THE STORM, EPA 833-B-03-002 (Jan. 2003), available at http://www.epa.gov/weatherchannel/storm_water.html (last visited Jul. 6, 2007); see U.S. ENVIRONMENTAL PROTECTION AGENCY, MANAGING URBAN RUNOFF, EPA841-F-96-004G (1996), available at <http://www.epa.gov/owow/NPS/facts/point7.htm> (last visited Jul. 6, 2007) (stating that EPA data shows runoff from urban areas to be the leading source of impairments to surveyed estuaries and the third largest source of impairments to surveyed lakes).
- ²⁸ See U.S. Environmental Protection Agency, *Managing Storm Water Runoff to Prevent Contamination of Drinking Water*, SOURCE WATER PROTECTION PRACTICES BULLETIN, EPA 816-F-01-020 (Jul. 2001), available at http://www.epa.gov/safewater/sourcewater/pubs/fs_swpp_storm_water.pdf (last visited Jul. 6, 2007) (describing how to manage storm water runoff near sources of drinking water and why this is important).
- ²⁹ Brookings Inst. Press Briefing, *Why Congestion Is Here To Stay, And Will Get Worse* (June 14, 2004), available at <http://www.anthonysdowns.com/congestiontostay.htm> (last visited Jul. 5, 2007) (stating that from 1980-2000, the total population of the U.S. rose 24%, yet the total number of miles traveled increased 80%).
- ³⁰ U.S. Environmental Protection Agency, 8-Hour Ground-level Ozone Designations: Region 5: State Designations, <http://www.epa.gov/ozonedesignations/regions/region5desig.htm> (last updated June 21, 2007).
- ³¹ McClure Engineering, *Storm Water Management Report for Wal-Mart Store 3857-00 at 2151/2101 Royal Ave., Monona, WI* (June 30, 2005). (Note: This report is unpublished, but is a public record and available through Public Records Law. Contact City of Monona, WI City Clerk for details.)
- ³² The Dane County Better Urban Infill Development (BUILD) Program defines infill development as “the economic use of vacant land (or the restoration or rehabilitation of existing structures or infrastructure) in already urbanized areas where water, sewer, and other public services are in place that maintain the continuity of the original community fabric.” For this definition and more information on infill development in Dane County, WI, see the Program’s website at <http://www.countyofdane.com/plandev/community/build/about.asp#infill> (last visited Jul. 5, 2007).
- ³³ For example, Wal-Mart recently opened a store in Monona, WI with underground parking. See City of Monona Newsletter (June 2006), <http://www.monona.wi.us/vertical/Sites/%7B4EF64B30-DEE6-486B-A007-DF1B9404319B%7D/uploads/%7B00BE08FF-4FD6-4C5F-B2AC-10617C6D46E4%7D.PDF> (last visited July 6, 2007).
- ³⁴ McClure Engineering, *Traffic Impact Study for Wal-Mart Supercenter, Monona* (Mar. 4, 2005) (study conducted by Traffic Analysis & Design, Inc. for McClure Engineering).
- ³⁵ See INSTITUTE OF TRANSPORTATION ENGINEERS, *Parking Generation* (2d ed. 1987) (1985).
- ³⁶ VILLAGE OF OREGON, WI., CODE § 17-704(7)(a) (2007).
- ³⁷ STOUGHTON, WI., MUN. CODE § 78-453 (2007), available at <http://wsll.state.wi.us/ordinances.html> (follow “Stoughton: City” link) (last visited July 5, 2007).
- ³⁸ CENTER FOR WATERSHED PROTECTION, *BETTER SITE DESIGN FACT SHEET: GREEN PARKING* (citing CENTER FOR WATERSHED PROTECTION, *BETTER SITE DESIGN: A HANDBOOK FOR CHANGING DEVELOPMENT RULES IN YOUR COMMUNITY* (Center for Watershed Protection, 1998), available at http://www.stormwatercenter.net/Assorted%20Fact%20Sheets/Tool4_Site_Design/GreenParking.htm (last visited July 5, 2007).
- ³⁹ WAUWATOSA, WI., MUN. CODE § 24.25.030(n) (2007), available at <http://www.bpcnet.com/codes/wauwatosal/> (last visited July 5, 2007).
- ⁴⁰ HOMER, AK., MUN. CODE § 21.61.105(k)(5)(c) (2007), available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited July 5, 2007).
- ⁴¹ Leo Pierre Roy, *The Perils of Parking Lots*, LAND DEVELOPMENT TODAY (April 10, 2006), available at <http://www.landdevelopmenttoday.com/Article632.htm> (last visited July 5, 2007).
- ⁴² Wal-Mart, *Wal-Mart’s Experimental Stores*, <http://www.walmartfacts.com/articles/3058.aspx> (last updated May 7, 2007) (last visited July 5, 2007).
- ⁴³ *Philadelphia Tackles Rainwater Runoff Pollution* (Nat’l Pub. Radio broadcast Sept. 29, 2006), available at <http://www.npr.org/templates/story/story.php?storyId=6165654> (last visited July 5, 2007).
- ⁴⁴ U.S. ENVIRONMENTAL PROTECTION AGENCY, *Low-Impact Development Design Strategies: An Integrated Design Approach* (June 1999), available at <http://www.epa.gov/OWOW/nps/lidnatl.pdf> (last visited July 6, 2007).
- ⁴⁵ U.S. Environmental Protection Agency, *Heat Island Effect, Green Roofs*, <http://www.epa.gov/hiri/strategies/greenroofs.html> (last visited July 5, 2007).

⁴⁶ Green Roofs Organization, Green Roofs for Healthy Cities, <http://www.greenroofs.net/> (follow the “About Green Roofs” link) (last visited July 5, 2007); Green Roofs Organization, About Green Roofs, (May 31, 2005) http://www.greenroofs.net/index.php?option=com_content&task=view&id=26&Itemid=40 (last visited July 5, 2007). Vegetation can extend the life of a roof. This is because less solar energy reaches the roof substrate, limiting damage from UV radiation as well as daily temperature fluctuations, which cause repeated contraction and expansion. U.S.

ENVIRONMENTAL PROTECTION AGENCY, *supra* note 25.

⁴⁷ Sydney Schwartz, *Greener Pastures for Urban Rooftops*, COLUMBIA NEWS SERVICE (Mar. 1, 2005), available at <http://jscms.jrn.columbia.edu/cns/2005-03-01/schwartzs-greenroofs> (last visited July 6, 2007).

⁴⁸ See City of Minneapolis Department of Public Works, Dedication, Regulation, Sticks and Carrots: The Story of one City’s Efforts to Reclaim the Mississippi River (Feb. 7, 2007), available at <http://www.pca.state.mn.us/publications/presentations/lakepepin-chellsen0207.pdf> (last visited July 6, 2007).

⁴⁹ *Wal-Mart Commits to Charrette in Mississippi*, 11 NEW URBAN NEWS (March, 2006), available at <http://www.newurbannews.com/Wal-MartMar06.html> (last visited July 6, 2007).

⁵⁰ Fairfax County, VA, LID BMP Fact Sheet – Bioswales, (Feb. 28, 2005), available at http://www.lowimpactdevelopment.org/ffxcty/1-4_bioswale_draft.pdf (last visited July 6, 2007).

⁵¹ CHICAGO, IL., CODE § 10-32-220 (2007); see THE NEW RULES PROJECT, <http://www.newrules.org/environment/chiland.html> (describing the July 1999 amendments to Chicago’s landscape ordinance, making it stricter) (last visited June 6, 2007).

⁵² “Wal-Mart, *supra* note 22.

⁵³ HOMER, AK., CODE § 21.61.105(L)(7), available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited June 6, 2007).

⁵⁴ STOUGHTON, WI., MUN. CODE Ch. § 78-467(15)(d) (2007), available at <http://wsll.state.wi.us/ordinances.html> (follow “Stoughton: City” link) (last visited July 6, 2007).

⁵⁵ U.S. Green Building Council, LEED for Retail, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=298> (last visited July 6, 2007). This website contains links to pdf drafts of the Green Building Rating System, which is currently being developed by LEED, for new construction and major renovations in the retail sector.

⁵⁶ U.S. Green Building Council, LEED for New Construction, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=220> (last visited July 6, 2007).

⁵⁷ U.S. GREEN BUILDING COUNCIL, LEED BROCHURE (2005), available at <https://www.usgbc.org/ShowFile.aspx?DocumentID=746> (last visited July 6, 2007); see also U.S. Green Building Council, Power Point presentation, available at https://www.usgbc.org/FileHandling/show_general_file.aspx?DocumentID=1035 (last visited July 6, 2007).

⁵⁸ U.S. GREEN BUILDING COUNCIL, LEED BROCHURE, <https://www.usgbc.org/ShowFile.aspx?DocumentID=746> (last visited July 6, 2007); see also U.S. GREEN BUILDING COUNCIL, Power Point presentation, https://www.usgbc.org/FileHandling/show_general_file.aspx?DocumentID=1035 (last visited July 6, 2007).

⁵⁹ *Id.*

⁶⁰ *Sprawl-Busters, Sam's Club Rejected for Refusal to Build Green Store* (June 2, 2002), <http://www.sprawl-busters.com/search.php?readstory=952> (last visited July 6, 2007).

⁶¹ CHAMBLEE, GA., CODE Art. II § 203(f) (2007). (“Applications for developments containing greater than fifty thousand (50,000) square feet of gross floor area shall submit a LEED (Leadership in Energy and Environmental Design) check-list at the time of application. The check list shall be completed by a LEED Accredited Professional and shall utilize the most recent version of the LEED program as governed by the U.S. Green Building Council. The LEED review shall document the specific elements of LEED certification that can and cannot be met and shall include a cost estimate for each element whether it is being met or not. The LEED review process shall not be a factor in the approval or denial of any development. The LEED check list shall be reviewed by the City Planner but shall not be a part of the application as it moves forward through the remainder of the approval process. LEED analysis is for informational purposes only and is intended to aid the City in facilitating the awareness of better-building practices within the City.”).

⁶² See Sam Newberg, *Greening a City From the Top Down*, URBAN LAND, Mar. 2007, at 77, available at <http://joe-urban.com/wp-content/uploads/2007/05/urban-land-march-2007-green-chicago.pdf> (last visited July 6, 2007).

⁶³ Nolan, Dolan Exactions case

⁶⁴ WIS. STAT. § 66.0617 (2007).

⁶⁵ WIS. STAT. § 66.0617.

⁶⁶ WIS. STAT. § 66.0617(1)(f).

⁶⁷ Unfortunately, the Wisconsin legislature has recently reduced the avenues that municipalities may use to charge impact fees. See WIS. STAT. § 66.0617; see also Richard A. Lehmann, *Recent Amendment To the Impact Fee Law Raises Concern*, 11 BOARDMAN LAW FIRM MUNICIPAL LAW NEWSLETTER 1-2, (July 2006), available at,

http://www.boardmanlawfirm.com/muni_newsletter/muniJul06.pdf (last visited July 6, 2007).

⁶⁸ WIS. STAT. § 66.0617(6)(g).

⁶⁹ TOWN OF LONDONDERRY, NEW HAMPSHIRE, IMPACT FEE CALCULATION FORM (2003), available at http://www.londonderrynh.org/impact_fees_revised_2003_1.pdf (last visited July 6, 2007).

⁷⁰ See BARNSTABLE CO., MA., CODE CH. F § 4(a), available at <http://www.capecodcommission.org/regulatory/ImpactFeeRegulations.pdf> (last visited July, 6, 2007).

⁷¹ See Assemb. 2701, 212th Leg. (NJ 2006). Text of the New Jersey bill is available at <http://www.newrules.org/retail/mirnj.pdf> (last visited July 7, 2007).

⁷² The New Rules Project, Bennington, Vermont Adopts Big-Box Ordinance (Jan. 27, 2005), available at http://www.newrules.org/retail/news_slug.php?slugid=281 (last visited July 6, 2007). Note that Bennington Vermont is an example of a city where the size cap located in the big-box ordinance was changed after the ordinance was enacted. However, Bennington's impact study requirement remains to help maintain community values and keep the big-box ordinance effective. The New Rules Project, Store Size Cap and Community Impact Assessment – Bennington, Vermont (Apr. 7, 2005), available at <http://www.ilsr.org/newrules/retail/sizebennington.html> (last visited July 6, 2007).

⁷³ MIDDLETON, RI., CODE § 310(d)(3) (2007), available at <http://www.middletownri.com/documents/building/Zoning%20Ordinance%20October%2030%202006.pdf> (last visited July 6, 2007).

⁷⁴ HOMER, AL., MUN. CODE § 21.61.105(L)(2) available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited July 6, 2007).

⁷⁵ WAUWATOSA, WI., MUN. CODE § 24.25.015 (A) (2007), available at <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited July 6, 2007).

⁷⁶ HOMER, AL., MUN. CODE § 21.61.105(L)(2).

⁷⁷ See, e.g., INSTITUTE OF TRAFFIC ENGINEERS, TRIP GENERATION (2001); see also Traffic Analysis & Design, Inc., Traffic Impact Study for Wal-Mart Supercenter Monona, USH 12/18 and South Towne Drive, Monona, WI. (Mar. 4, 2005).

⁷⁸ See Steven J. Dush Gregory P. Muhonen, *The Language of Traffic*, THE COMMISSIONER (Amer. Planning Assn., Spring 2002), available at <http://www.planning.org/thecommissioner/spring02.htm> (last visited July 6, 2007).

⁷⁹ See Auburn School Department, Lake Street Project: Traffic Analysis, available at <http://www.auburnschl.edu/Projects/LakeStreet/EaselBoardTexts.pdf> (last visited July 6, 2007).

⁸⁰ *Id.*

⁸¹ MADISON, WI., CODE §§ 33.02(4)(b),(f)-(i), 33.02(24)(b), 28.09(3)(d)(24) (2007); see City of Madison Legislative File Number 00418 (Version 5 of Madison's Draft Big-Box Ordinance, as adopted in final form), available at <http://www.ci.madison.wi.us/planning/bigboxfinalpdf.pdf> (last visited July 6, 2007).

⁸² Wal-Mart Watch, Comprehensive Plans, http://walmartwatch.com/battlemart/go/cat/comprehensive_plans (last visited July 6, 2007) (see the “Comprehensive Plan Example Items” section of this fact sheet).

⁸³ STOUGHTON, WI., MUN. CODE, § 78-467 (10)(a)(e) (2007) available at <http://wsll.state.wi.us/ordinances.html> (follow “Stoughton: City” link) (last visited July 6, 2007).

⁸⁴ WAUWATOSA, WI., MUN. CODE § 24.25.030 (F) (2007), available at <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June 7, 2007).

⁸⁵ *Id.*

⁸⁶ STOUGHTON, WI., MUN. CODE, § 78-467 (16)(b) (2007) available at <http://wsll.state.wi.us/ordinances.html> (follow “Stoughton: City” link) (last visited June 7, 2007).

⁸⁷ § 78-467 (16)(c).

⁸⁸ See, e.g., Cawtawba Riverkeeper, Wal-Mart's Impact to Water Quality, <http://www.catawbariverkeeper.org/wal-mart%20%20> (last modified Nov. 11, 2005) (last visited July 6, 2007).

⁸⁹ STOUGHTON, WI., MUN. CODE, § 78-467 (17) (2007) available at <http://wsll.state.wi.us/ordinances.html> (follow “Stoughton: City” link) (last visited July 6, 2007).

⁹⁰ See John R. Nolon, *Protecting Scenic Assets: Regulations Based on Study, Expert Reports and Rationality*, NEW YORK LAW JOURNAL (June 17, 1998), available at Pace Law School Land Use Law Center <http://www.law.pace.edu/landuse/scennyj.htm> (last accessed June, 2006); see also *Wal-Mart Stores Inc., et al. v. Planning Bd. of the Town of North Elba*, 668 N.Y.S.2d 774, 238 A.D.2d 93, 98-99 (App. Div. 1998).

⁹¹ HOMER, AK., CODE § 21.61.105(L)(5)(b) (2007), available at <http://clerk.ci.homer.ak.us/document/2161.htm#c105> (last visited July 6, 2007).

⁹² Definition of an outlot is that it is not a buildable lot at the time of subdivision development, but is an excess piece of land.

⁹³ STOUGHTON, WI., MUN. CODE, § 78-467 (23) (2007) available at <http://wsll.state.wi.us/ordinances.html> (follow “Stoughton: City” link) (last visited June 7, 2007).

⁹⁴ 78 § 78-467 (21).

⁹⁵ WAUWATOSA, WI., MUN. CODE § 24.25.040(B) (2007), available at <http://www.bpcnet.com/codes/wauwatosal/> (last visited July 6, 2007).

⁹⁶ § 24.25.040(B).

⁹⁷ Al Norman, SLAM-DUNKING WAL-MART: HOW YOU CAN STOP SUPERSTORE SPRAWL IN YOUR HOMETOWN. (Raphael Marketing, July 15, 1999). Crime section excerpt from the book is available at:

<http://walmartwatch.com/img/documents/CrimeAtWalMart.pdf> (last visited July 6, 2007).