

Midwest Environmental
A D V O C A T E S
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Conditional Use Permit (CUP) Tool-Kit

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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.

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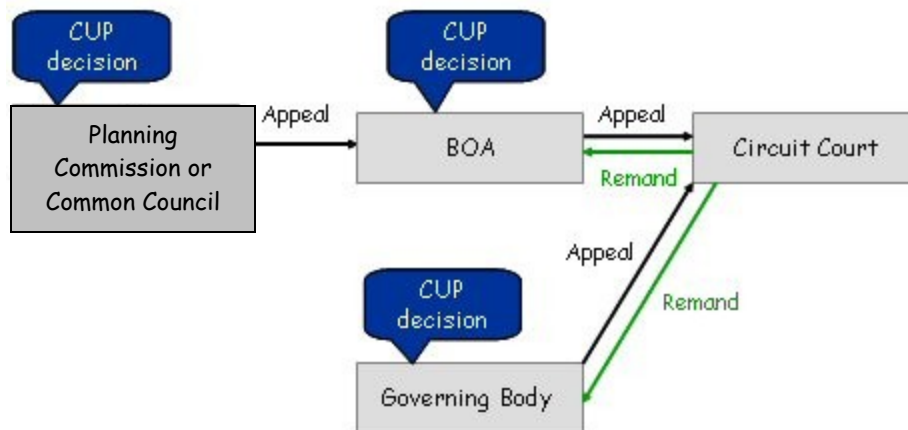
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I. INTRODUCTION

While proactive ordinances, like big-box ordinances (see MEA's [Big-Box Ordinance Tool-Kit](#)) are the most effective way to address the effects of big-box development, even the most effective ordinances may not equip a community for all situations. If your community does not have a big-box ordinance in place, or if the ordinance does not cover all the impacts of a big-box, you can still take action at the Conditional Use Permit (CUP) stage, if such a permit is required in your community's zoning code/ordinance. (Note: that there are several steps before the CUP stage at which residents may take action to address big-box development. (For more information go to the <<Land Use Tool-Kit>> flowchart).

Most zoning codes recognize permitted uses and conditional uses within each specific zone. When the zoning code requires that the applicant apply for a CUP, the Planning & Zoning Commission/Commission or Common Council may request that the applicant perform additional conditions to address outstanding concerns. 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 city grants approval to the developer, and 2) it is essential that the Planning Commission/Committee ensure public welfare through CUP conditions. Throughout this tool-kit are examples of communities that successfully demand that a big-box meet certain conditions in order to limit perceived threats to the public's welfare. With the following conditions as a guide, you can get involved in the CUP hearings and make sure the CUP has addressed all impacts associated with a proposed development!

Overview of the Conditional Use Permit (CUP) Processⁱ



Generally, during the CUP Application Process, the Planning Board or 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 the general purpose of the Zoning Code (and possibly the Comprehensive Plan/Land Use Element depending on the locality).ⁱⁱ

When considering a CUP application, the planning board or commission has the legal right to request that the applicant meet additional conditions that are not explicitly listed in the big-box ordinance or other municipal codes, put necessary to meet the goals and purpose of the zoning ordinances.ⁱⁱⁱ These conditions are set in order to protect the public from negative impact of the development and ensure that this new land use fits zoning code requirements and, in some cases, comprehensive plan guidance.^{iv}

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 the ordinances.

II. REQUIRING A SITE PLAN

Before the Plan Commission can adequately address impacts, it needs detailed site plans that expand beyond the building design. It is important that the planning committee/commission specifically require a detailed individual site plan so that the City can make a well-informed decision. Among other details, the site plan should identify environmental characteristics of the site and surrounding area, the site's drainable pattern, and specific landscaping features.

Example: Homer, AK, requires that the site plan submitted with the application shows "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."^v

III. LIMITING IMPERVIOUS PAVEMENT

Big-boxes greatly contribute to increased stormwater run-off because they include large parking lots, roofs, roads, and construction. Impervious pavement leads creates stormwater run-off, the largest source of pollution to our nation's waters.^{vi} Most stormwater drains directly from the streets and parking lots into the nearest water body. Without treatment, pollutants like oil, grease, phosphorus, and dirt, can seriously impair otherwise healthy water bodies. Additionally, impervious surfaces do not allow stormwater to filter back into the soil to replenish groundwater. The loss of groundwater

in addition to the direct impact on surface waters creates a serious impact on a community's environment and water supply.

One key goal of sustainable site design is for the site to be “hydrologically-neutral,” meaning that the site can manage as much rainwater that falls on it post-development as it did pre-development. On-site stormwater management restores the water cycle, replenishing the groundwater and reducing run-off to nearby water bodies. Additionally, on-site filtration is less costly since it does not require large catch basins, pipes, and off-site storage ponds.^{vii}

Given these goals, communities should require applicants to take steps to minimize impervious surfaces.

A. Multi-level, Structured Parking

The key to sustainable stormwater management is eliminating sprawling parking lots. Despite what some big-box applicants may claim, retail developments can use underground parking and/or above ground parking structures. Communities should condition CUP approval on multi-level, structured parking.

Structured parking helps reduce environmental impacts and preserve open space by providing the same number of parking places on a smaller footprint. Putting the parking beneath the store eliminates roughly half the amount of impervious surface.^{viii} Turning a 30-acre big-box development into a 15-acre big-box development dramatically reduces the amount of polluted run-off that is sent into our rivers, lakes and streams. More importantly, this smaller footprint raises possibilities for “in-fill” development in existing, vacant commercial areas.^{ix} Retailers, like Wal-Mart, have built big-box developments with nearly all of the parking underground. Why are we still accepting the sprawling lots?

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 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 take away the parking lots.^x

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.^{xi}

Example: Oregon, WI will be proposing a paved parking ratio of no more than 125% of the minimum parking ratio identified by ITE.^{xii}

Example: Stoughton, WI requires a max of four parking spaces/1,000 square feet of gross floor area for buildings 25,000--400,000 square feet.^{xiii}

- **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.

Also, minimizing the size of individual parking spaces will reduce the total size of a parking lot. While the trend toward larger sport utility vehicles (SUVs) is often cited as a hindrance to minimizing parking stalls, stall width requirements in most local parking codes are much larger than the widest SUVs.^{xiv}

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. This 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.^{xv}

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.^{xvi}

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, replenishing 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. Keep in mind that porous pavements may not be appropriate in areas immediately adjacent to sensitive water bodies, water supplies, or in areas with high water tables in case of a spill of oil or hazardous materials that should not infiltrate into the ground.^{xvii} When used in the right locations, porous pavement can be a good way to limit stormwater run-off.

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

E. Give Incentives for Big-Box Retailers to Install Green Roofs.

Green roofs or roof gardens are not only aesthetically pleasing, but they also increase the site's infiltration capacity and provide natural cooling. Researchers estimate that Green Roofs with three to five inches of soil absorbs 75% of rain events that are one-half inch or less.^{xix} Green roofs also filter air, regulate temperature, and cut costs in the long-run.^{xx} Although much depends on the particular building and green roof, green roofs protect the roof membrane, resulting in a longer material lifespan (it is estimated that green roofs will last up to twice as long as conventional roofs).^{xxi}

Example: Chicago, IL, provides incentives to new big-box stores like Target and Wal-Mart and downtown developers who install green roofs.^{xxii}

F. Promote Mixed Use Development

Mixed-use development combines many different land uses in one area. This may include residences, restaurants, movie theaters, and other retail stores. Most mixed use developments allow people to walk from store to store, reducing the amount of parking spaces needed and the on-site impervious surface.

Example: Duany, Plater and Zyberk 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 multilevel 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.^{xxiii}

IV. LANDSCAPING

In addition to green roofs and restrictions of impervious pavement, landscaping requirements such as berms or bioswales can help reduce stormwater run-off from a big-box development.

Bioswales are planted channels that slow down and help infiltrate stormwater runoff.^{xxiv} These natural areas should be interspersed throughout the parking lot to help break up large areas of impervious pavement and allow stormwater to infiltrate into the ground and replenish 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.^{xxv}

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

Example: Homer, AK, requires buffers and landscaped islands with native vegetation.^{xxvii}

Example: Stoughton, WI, requires developers to plant certain species of trees.^{xxviii}

V. 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. Currently, LEED is developing a LEED - RETAIL pilot project.^{xxix}

Since a retail system does not currently exist, big-box retailers could adhere to the LEED-NC for New Construction and Major Renovations. LEED-NC is a green building rating system

designed to guide and distinguish high-performance commercial and institutional projects, with a focus on office buildings.^{xxx}

Normally, a developer is given a checklist at the time s/he applies for LEED certification. A LEED-accredited professional then utilizes the most recent version of the LEED program as governed by the U.S. Green Building Council to evaluate the building via this checklist. 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 developer may estimate the cost of coming into compliance for that particular requirement and then the planning commission may determine whether the benefit of coming into compliance is worth the cost and whether they will require the developer to be LEED certified.^{xxxi}

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.^{xxxii} 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.^{xxxiii}

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.^{xxxiv}

Example: For every rezoning application, 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.^{xxxv}

VI. IMPACT FEES

A major misconception is that additional development outside the community center will only bring increased revenue and bolster a community's economy. In fact, additional development can be a burden on existing communities if it the costs associated with expanded police and fire services, road expansion and maintenance, increased school enrollment, and extension of sewer and water lines outweigh the benefits. Additionally, new developments generate new sources of polluted runoff and may disrupt environmentally sensitive areas. 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 need for such additional services. 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. Thus, impact fees are used relieve government from bearing the initial costs of new development, not to impose an arbitrary charge for development. Impact fees can change based on land use and, therefore, be used for retail sectors where cost are able to be paid by the in-coming developers.^{xxxvi}

- **TIP:** Localities may use impact fees to install and maintain stormwater management facilities on newly developed sites in Wisconsin.^{xxxvii}

Unfortunately, the Wisconsin legislature has recently reduced the avenues that municipalities may use to charge impact fees. 1993 Wisconsin Act 305 and 2005 Wisconsin Act 477 are recent alterations to applicable state impact fee statutes.^{xxxviii}

- **TIP:** Due to statutory time limitations for collecting fees, make sure that permits are conditioned on payment of the impact fee.^{xxxix}

However, even with the recent amendments, the legal authority to collect impact fees is still quite broad. For example, communities may collect impact fees for the following land uses:

- 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^{xl}

- **TIP:** Propose that your community enact an ordinance which allows impact fees for the facilities above. If your community already has such an ordinance, advocate that the Planning Committee/Commission include impact fees in their CUP.

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

VII. REQUIRING A MANDATORY COMMUNITY IMPACT ANALYSIS

Big-box stores affect the entire community's economic vitality, traffic, and environment. Unfortunately, site plan reviews often fail to consider impacts outside of the immediate site area. A Community Impact Analysis offers a solution to this problem.

Community Impact Analyses 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 Planning Commission needs to sign off on 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.^{xlii} Similarly, New Jersey just introduced a bill to require regional impact analyses.^{xliii}

A. Communities Should Independently Select Consultants

Independently selected consultants are more likely to conduct impartial impact analyses than consultants hired by the applicant. Some impact studies seem to simply justify the chosen project instead of reviewing all impacts without judgment. If the City selects the consultant, there is a better chance that the study will present an objective analysis of potential impacts.

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 City/Town/Village/County that the project will meet zoning regulations and protect the public's health and welfare. Therefore, it seems logical that the applicant pays 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.^{xliv}

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.^{xlv}

C. Include Specific Requirements for Community Impact Analyses

Ask your planning council or board to require a specific list of requirements. This ensures that the study will include all necessary information for the council to make an educated decision.

Example: Homer, AK, requires the following data:^{xlvi}

- Estimated Cost to a city for increased demand for infrastructure
- Net impacts on current business district
- Net change in sales tax and property tax base, revenues, and overall land values
- The estimated net impacts to local employment, wages and salaries, locally retained profits, property taxes, and sales taxes.

Example: Wauwatosa, WI, requires:^{xlvii}

- 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, amount of local labor to be used.

- 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 include future costs in the analysis.

Example: Homer, AK, requires a 10-year horizon^{xlviii}

VIII. REQUIRE A MANDATORY ENVIRONMENTAL IMPACT ANALYSIS

An environmental impact analysis analyzes a development's impact on your community's natural resources and environmental quality. Big-box development impacts air quality, water quality and decreases your community's open space. Requiring an environmental impact analysis ensures that the community is knowledgeable about its resources, educates itself on how to protect these resources, and maintains a sustainable community.

- **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, future growth should be included. After one farm is turned into a commercial center and the infrastructure shifts, the surrounding area will likely follow. Impact studies should not assume that surrounding areas will remain open spaces. 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.

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

Sustainable communities do not expand faster than the needs of the community or the infrastructure developed to meet community needs. Traffic jams are a sign that communities are not maintaining steady growth. Big-box Supercenters, spanning roughly 200,000 square feet, are often too much for a small community's infrastructure to handle. Big-Box Supercenters instantly add an estimated 11,000 new car trips to area roads every day.^{xlix} Often, this traffic is diverted from city centers to areas that had not previously served heavy traffic flow. The increased traffic can also turn small downtown streets into traffic jams with new cars that are heading to and from the new big-box retailer.

Traffic impacts affect public safety and welfare. In addition to the air quality issues and traffic accidents, studies have found that, due to our reliance on cars, we are walking and exercising less.¹ CUPs conditions should be used to maintain a healthy community and protect the community way-of-life. Before issuing a CUP, communities should require traffic impact studies and clear conditions that maintain flowing traffic without significantly altering the city's current traffic flow.

Traffic Impact Analyses (TIA) and Transportation Demand Management Reports (TDM) analyze the impacts that will stem from increase 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 avoid heavy traffic, communities should plan new development so that the resulting traffic demand is consistent with its existing infrastructure. The Institute of Traffic Engineers (ITE) evaluates the performance or “level of service” of a roadway depending on road type, traffic volumes and speeds, and lengths of backups at intersections.ⁱⁱ

Level of Service (LOS) is 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)ⁱⁱⁱ**

- 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)ⁱⁱⁱ**

- 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**

Communities need to figure out whether the addition of 11,000 new car trips to areas surrounding the new development and diverting traffic from other areas to the new development will overwhelm 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. In some cases, no action can be taken to adequately meet the needs of 11,000 new car tips. These communities can avoid traffic problems by focusing on smaller retail developments.

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.^{liv}

- **TIP:** Ask your planning commission to require a level of service C or better. (A - 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%.^{lv}

X. 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 planning 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."^{lvi} 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."^{lvii}

- **TIP:** Although the above clauses are a good start, oftentimes the accessibility of the big-box is dependent on its site location. Advocate for a site location that fosters bicycle and pedestrian access within the downtown area of your community.

B. Require Public Transport Access On-site

In addition to walking and biking, advocate a site location near public transportation so that various modes of transportation are available to community members who would like to frequent the big-box.

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.^{lviii} 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.

XI. 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." ^{lix} Stoughton also requires a maximum height of 20 feet for all lamp poles.

XII. 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. ^{lx}

- **TIP:** Make sure that the council or map includes outdoor storage areas in their net square footage calculation.

XIII. REGULATING SIGNS

Large big-box signs and billboards often ruin scenic vistas. Communities can create scenic overlays to protect vistas in their zoning codes 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 also gives guidelines that the signage be "modest, coordinated, and complimentary. . ." ^{lxi}

Example: North Elba, New York, requires that applicants show that the proposed project "will not result in a clearly adverse aesthetic impact" in their Land Use Code. 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. ^{lxii}

XIV. ELIMINATE UNNECESSARY TRAFFIC AND PARKING LOT ACTIVITY

Certain big-boxes allow campers to park in their unused parking lots overnight. Often this use creates an around-the-clock strain on community police resources. Environmentally, this extra use increases oil and grease accumulation on the parking lot, which exacerbates storm-water run-

off pollution coming from big-box roofs and parking lots. 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 such signs.

Example: Homer, AK, requires "No overnight camping signs." ^{lxiii}

XV. 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.^{lxiv} To alleviate the concerns over a 24-hour retail center, communities should consider creating a condition that limits big-boxes' hours of operation.

XVI. 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 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.

- ⁱ UW Steven's Point Center for Land Use, "New Court Decisions Regarding Conditional Use Permits," Land Use Tracker, Volume 5, Issue 2 Fall 2005. <http://www.uwsp.edu/cnr/landcenter/tracker/fall2005/condusepermits.html>
- ⁱⁱ UW Steven's Point Center for Land Use, "Conditional Uses: What Are They, Who Decides Them, and What Conditions May Be Included," Land Use Tracker, Volume 3, Issue 4 Spring 2004.
- ⁱⁱⁱ *Kraemer & Sons, Inc. v. Sauk County Bd. of Adjustment*, 183 Wis.2d 1; 515 N.W.2d 256 (1994).
- ^{iv} While Comprehensive Plans have are not necessarily binding until January 1, 2010, some local ordinances incorporate the Comprehensive Plan by reference in the zoning code.
- ^v City of Homer, AK. Municipal Code § 21.61.105(d) (2003)
- ^{vi} Environmental Protection Agency, Watershed "After the Storm" Fact Sheet, <http://www.epa.gov/weatherchannel/stormwater.html> (last visited Aug., 2006).
- ^{vii} Environmental Protection Agency, Source Water Protection Practices Bulletin: Managing Stormwater Run-off to Prevent Contamination of Drinking Water (July 2001), <http://www.epa.gov/safewater/protect/pdfs/stormwater.pdf> (last visited Aug., 2006).
- ^{viii} McClure Engineering, "Stormwater 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.)
- ^{ix} Infill development is 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 more information on infill development in Dane County, go to: <http://www.countyofdane.com/plandev/community/build/about.asp#infill> (last visited July 13, 2006).
- ^x Traffic Impact Study for Wal-Mart Supercenter, Monona. Prepared by Traffic Analysis & Design, Inc. for McClure Engineering (March 4, 2005).
- ^{xi} Institute of Transportation Engineers, "Parking Generation," 2nd Edition 1987. (Note: 3rd Edition recently released. These numbers are not used in this tool kit. See <http://www.ite.org/cgi-bin/searcht.cgi?wh=S&kw=parking+generation&sw=1&de=0&it=>)
- ^{xii} Village of Oregon Draft Zoning Ordinance 2006 Section 17-7049(7)(a), Vandewalle & Associates, Madison
- ^{xiii} Stoughton, Wisconsin Ordinance, Ch 78 § 453, Parking requirements (2004).
- ^{xiv} Center for Watershed Protection. *Better Site Design: A Handbook for Changing Development Rules in Your Community*. Center for Watershed Protection, Inc., Ellicott City, MD. 1998.
- ^{xv} City of Wauwatosa, WI Municipal Code § 24.25 (2005), <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June, 2006)
- ^{xvi} City of Homer, AK. Municipal Code § 21.61.105(1)(2)(a).
- ^{xvii} Leo Pierre Roy, *The Perils of Parking Lots*, April 10, 2006, <http://www.landdevelopmenttoday.com/Article632.htm> (last visited June, 2006).
- ^{xviii} Wal-Mart McKinney Experimental Store Fact Sheet, <http://walmartstores.com/GlobalWMStoresWeb/navigate.do?catg=445> (last visited July, 2006)
- ^{xix} Environmental Protection Agency, Heat Island Effect, Green Roofs, <http://www.epa.gov/hiri/strategies/greenroofs.html> (last visited Aug, 2006).
- ^{xx} Green Roofs Organization, <http://www.greenroofs.net/> (last visited July, 2006)
- ^{xxi} 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. Environmental Protection Agency, Heat Island Effect, Green Roofs, <http://www.epa.gov/hiri/strategies/greenroofs.html> (last visited Aug, 2006).
- ^{xxii} Sydney Schwartz, Greener Pastures for Urban Rooftops, Columbia University Newsletter, <http://jscms.jrn.columbia.edu/cns/2005-03-01/schwartzs-greenroofs> (last visited July, 2006).
- ^{xxiii} Wal-Mart Commits to Charrette in Mississippi. New Urban News (March, 2006 Edition Volume 11, No.. 2), <http://www.newurbannews.com/Wal-MartMar06.html> (last visited July, 2006).
- ^{xxiv} Fairfax County, VA, "LID BMP Fact Sheet – Bioswales," February 28, 2005 (http://www.lowimpactdevelopment.org/ffxcty/1-4_bioswale_draft.pdf)
- ^{xxv} City of Chicago, IL Municipal Ordinance § 10-32-220, press release available at: http://egov.cityofchicago.org/city/webportal/portalContentItemAction.do?BV_SessionID=@@@@1970248079.1154630389@@@@&BV_EngineID=cccdaddihjfmgddcefecelldfhdfgn.0&contentOID=536932287&contentType=COC_EDITORIAL&topChannelName=Dept&blockName=Environment%2FAbout+Chicago%27s+Green+Roofs%2FI+Want+To&text=dept&channelId=0&programId=0&entityName=Environment&deptMainCategoryOID=-536887205 (last visited July, 2006)

- ^{xxvi} Wal-Mart McKinney Experimental Store Fact Sheet,
<http://walmartstores.com/GlobalWMStoresWeb/navigate.do?catg=445> (last accessed July, 2006)
- ^{xxvii} City of Homer, AL Municipal Code § 21.61.105(I)(2)(a)
- ^{xxviii} City of Stoughton, WI Municipal Ordinance Ch 78 § 467 (16).
- ^{xxix} LEED - NC for Retail Pilot, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=298> (last accessed July, 2007).
- ^{xxx} U.S. Green Building Council, "LEED - New Construction Fact Sheet,"
<http://www.usgbc.org/DisplayPage.aspx?CMSPageID=220> (Last visited June, 2006).
- ^{xxxi} U.S. Green Building Council's LEED Brochure, <https://www.usgbc.org/ShowFile.aspx?DocumentID=746> (last visited June, 2006); See also Power point presentation,
https://www.usgbc.org/FileHandling/show_general_file.asp?DocumentID=1035
- ^{xxxii} *Id.*
- ^{xxxiii} *Id.*
- ^{xxxiv} Sprawl Busters, "Sam's Club Rejected for Refusal to Build Green Store," <http://www.sprawl-busters.com/search.php?readstory=952> (last visited
- ^{xxxv} City of Chamblee, GA City Ordinance, Article II § 203(f). ("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.")
- ^{xxxvi} Wis. Stat. § 66.0617 (2005).
- ^{xxxvii} Wis. Stat. § 66.0617
- ^{xxxviii} See Wis. Stat. § 66.0617. See also Boardman Law Firm Newsletter, Volume 11, Issue 7, July 2006,
http://www.boardmanlawfirm.com/muni_newsletter/muniJul06.pdf (last visited July, 2006) (Wisconsin Act 305 authorizes local units of government to charge impact fees for capital costs, but not for annual operating costs. Wisconsin Act 477 changes the definition of public facilities. However, most parks, athletic facilities etc. remain eligible for impact fee assessment. The amendment to Wis. Stat. § 236.45 can be read to mean that municipalities cannot require subdivision developers to pay toward public improvements outside of the subdivision, such as widening streets or bridges, installing traffic signals, constructing a storm water pond serving several subdivisions, and the like. This new statute should be considered in conjunction with another statute, Wis. Stat. § 236.13(2)(a), which provides that a municipality may require a subdivision developers to make and install any public improvements reasonably necessary. This usually applies to improvements that will be built by the subdivision developers within the subdivision and turned over to the municipality).
- ^{xxxix} Boardman Law Firm, *Municipal Law Newsletter*, Volume 11, Issue 7 (July, 2006).
http://www.boardmanlawfirm.com/muni_newsletter/muniJul06.pdf (last visited July, 2006).
- ^{xl} See Wis. Stat. § 66.0617.
- ^{xli} Londonderry Zoning Ordinance Impact Fee Calculation Form,
http://www.londonderrynh.org/impact_fees_revised_2003_1.pdf (last visited July, 2006).
- ^{xlii} Cape Cod Commission, Regional Planning and Land Use Regulatory Agency for Barnstable, MA,
<http://www.capecodcommission.org/act.htm> (last accessed July, 2006).
- ^{xliii} See NewRules.Org, New Jersey Bill S2080, <http://www.newrules.org/retail/mirnj.pdf>
- ^{xliv} NewRules.Org, Bennington, Vermont Adopts Big-Box Ordinance,
http://www.newrules.org/retail/news_slug.php?slugid=281 (last visited Aug., 2006). 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. See New Rules Org for more: <http://www.ilsr.org/newrules/retail/sizebennington.html>
- ^{xlv} See New Rules.org. Case study of Middletown, Rhode Island, <http://www.newrules.org/retail/middletown.html> (last visited July, 2006).
- ^{xlvi} City of Homer AL Municipal Code § 21.61.105(I)(2)(a)
- ^{xlvii} City of Wauwatosa, WI Municipal Ordinance § 24.25.030 (F) (2005),
<http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June, 2006)
- ^{xlviii} City of Homer AL Municipal Code § 21.61.105(I)(2)(a)

- ^{xlix} See e.g. Institute of Traffic Engineers, "Trip Generation" 2001; Traffic Analysis & Design, Inc., "Traffic Impact Study for Wal-Mart Supercenter Monona, USH 12/18 and South Towne Drive, Monona, WI." March 4, 2005.
- ^l Dr. Reid Ewing, Dr. Richard Kreutzer, Lawrence Frank. UNDERSTANDING THE RELATIONSHIP BETWEEN PUBLIC HEALTH AND THE BUILT ENVIRONMENT. (Design, Community & Environment and Company Inc., May 2006). <https://www.usgbc.org/ShowFile.aspx?DocumentID=1480> (last visited June, 2006).
- ^{li} See <http://www.planning.org/thecommissioner/spring02.htm>
- ^{lii} See <http://www.auburnschl.edu/Projects/LakeStreet/EaselBoardTexts.pdf>
- ^{liii} *Id.*
- ^{liv} City of Madison Legislative File Number 00418 (Version 5 of Madison's Draft Big-Box Ordinance, as adopted in final form).
- ^{lv} Wal-Mart Watch's Comprehensive Plan Fact Sheet, http://walmartwatch.com/battlemart/go/cat/comprehensive_plans (last visited June, 2006).
- ^{lvi} City of Stoughton, WI Municipal Ordinance, Ch 78 § 467 (10)
- ^{lvii} City of Wauwatosa, WI Municipal Ordinance 24.25.030 (F) (2005) <http://www.wauwatosa.net/ImageLibrary/Internet/BigBoxOrdinanceFinal.pdf> (last visited June, 2006)
- ^{lviii} *Id.*
- ^{lix} City of Stoughton, WI Municipal Ordinance, Ch 78 § 467 (16)
- ^{lx} See e.g., Cawtawba Riverkeeper, *Wal-Mart's Impact to Water Quality*, <http://www.catawbariverkeeper.org/wal-mart> (last visited June, 2006).
- ^{lxi} City of Stoughton, WI Municipal Ordinance ch. 78 § 467(17)
- ^{lxii} John R. Nolon, *Protecting Scenic Assets: Regulations Based on Study, Expert Reports and Rationality* (New York Law Journal), <http://www.law.pace.edu/landuse/scennylj.htm> (last accessed June, 2006); See also *Wal-Mart Stores Inc. v. Planning Board of the Town of North Elba*, NYS 2d 774 (1998).
- ^{lxiii} City of Homer, AL Municipal Code § Title 21.61.105(I)(2)(a)
- ^{lxiv} Al Norman, *SLAM-DUNKING WAL-MART: HOW YOU CAN STOP SUPERSTORE SPRAWL IN YOUR HOMETOWN*. Raphel Marketing. (July 15, 1999). Crime section excerpt from the book is available at: <http://walmartwatch.com/img/documents/CrimeAtWalMart.pdf> (last visited Aug., 2006).