

Appendix

Who Decides Whether to Grant Conditional Uses and Special Exceptions

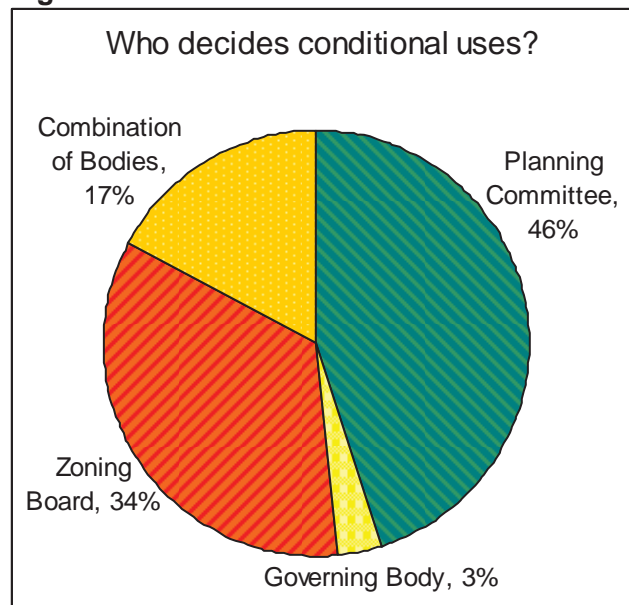
Conditional use is used in this appendix to mean both conditional uses and special exceptions.

The local governing body must determine by ordinance whether the zoning board, the governing body or the planning commission/committee will decide special exceptions and conditional use permits.²²³ *Figure 44* shows who decides conditional uses for Wisconsin counties based on a 2004 survey completed by 31 counties.

When the local ordinance is written or amended to determine which body is best suited to decide conditional uses, consider the following factors:

- **Plan commission/committee** - This body commonly decides conditional use permits

Figure 44: Conditional Use Decision Makers



²²³ Counties - Wis. Stat. § 59.694(7)(a); Cities, villages and towns with village powers - Wis. Stat. § 62.23(7)(e)1

because they are usually the most knowledgeable about the community plan and zoning ordinance, as well as relevant state statutes and case law. The plan commission/committee is continuously involved in the process of recommending legislative changes in the zoning ordinance and is therefore more apt to be conversant with the “purpose and intent” of the ordinance than the zoning board.²²⁴ In some cases, the plan commission/committee makes recommendation on conditional use permits to the governing body.

There are drawbacks to the plan commission/committee deciding conditional use permits. Their biases about ordinance provisions may be on record from the time of ordinance adoption/amendment. In addition, there could be a conflict between the role of being an unbiased decision maker when deciding conditional use permits and the fact that some plan commission/committee members are elected and may be tempted to represent their constituents rather than make objective decisions based on applicable standards and evidence in the record.

- **Governing body** - The governing body typically does not know the ordinance as thoroughly as the plan commission/committee and often already has a full workload. Sometimes, the plan commission/committee makes a recommendation to the governing body on conditional use permits. The governing body has the same drawbacks as the plan commission/committee in deciding conditional use permits by having recorded biases and being elected officials. Additionally, the total amount of time invested in conditional use permit decisions will likely increase significantly if assigned to the governing body as it has many more members than either of the other two bodies.
- **Zoning board** - This body should be relatively familiar with the zoning ordinance due to its responsibilities for deciding variances and administrative appeals, yet may not consider community-wide planning issues to the same extent as the plan commission/committee. Because zoning board members are appointed rather than elected, they clearly do not represent a group of constituents and are less likely to be biased.

²²⁴ *State ex rel. Skelly Oil Co. v. City of Delafield*, 58 Wis. 2d 695, 207 N.W.2d 585 (1973)