Zoning and Conditional Use Permit Survey

Center for Land Use Education, October 2020
Rebecca Roberts, Lynn Markham and Karen Blaha
Part I: General Questions

Q1 - Who is completing this survey? (N=189)

<table>
<thead>
<tr>
<th>Role</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning staff</td>
<td>66</td>
<td>35%</td>
</tr>
<tr>
<td>Zoning staff</td>
<td>56</td>
<td>30%</td>
</tr>
<tr>
<td>Local official</td>
<td>26</td>
<td>14%</td>
</tr>
<tr>
<td>Clerk/Administrator</td>
<td>19</td>
<td>10%</td>
</tr>
<tr>
<td>Consultant</td>
<td>10</td>
<td>5%</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
<td>6%</td>
</tr>
</tbody>
</table>

Other responses include regional planning commission, zoning committee, attorney, director, zoning administrator, and positions with responsibility for planning and zoning functions.
Q2 - What level of government do you represent? (N=189)

Town (34) 18%

Village (21) 11%

City (61) 32%

County (65) 34%

Other (8) 4%

Other responses include airport, regional planning commission, and consultant representing multiple levels of government.
Q3 - Local governments have flexibility to assign decision-making responsibility for conditional use permits to one of three bodies, as described in their local zoning ordinance. Please indicate which body has final authority to decide conditional use permits in your jurisdiction. (N=189)

- Zoning Board: (31) 16%
- Plan Commission/Zoning Committee: (84) 44%
- Governing Body: (65) 34%
- Other: (9) 5%

Other responses include tiered assignment to staff/plan commission/city council, plan commission decision with appeal to zoning board, and depends on municipality.
Q4 - In an average year, approximately how many conditional use permits are filed in your community? (N=166)

Average = 14 permits

- 1-10: (95) 57%
- 11-20: (42) 25%
- 21-30: (11) 7%
- 31-40: (5) 3%
- 40+: (13) 8%
Q5 - Roughly what percent of conditional use permits are approved? (N=180)

- 75% or more: 90%
- 50-74%: 4%
- 25-49%: 3%
- Less than 25%: 3%
Q6 - What are the most common reasons for denying a conditional use permit? (N=180)

<table>
<thead>
<tr>
<th>Reason</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance standards not met</td>
<td>86</td>
<td>48%</td>
</tr>
<tr>
<td>Applicant unwilling to accept conditions</td>
<td>49</td>
<td>27%</td>
</tr>
<tr>
<td>Unable to craft conditions that make use suitable</td>
<td>31</td>
<td>17%</td>
</tr>
<tr>
<td>Incomplete application</td>
<td>21</td>
<td>12%</td>
</tr>
<tr>
<td>Other</td>
<td>24</td>
<td>13%</td>
</tr>
</tbody>
</table>

Other responses include not consistent with comprehensive plan, not consistent with surrounding land use, neighbor objections, recommendation to deny from town, plan commission or staff, applicant did not meet standards and withdrew following discussion with staff. Many noted they have not denied a conditional use permit.
Part II: Process and Standards

The following questions ask about the process for granting conditional use permits in your community. There are no right or wrong answers. Please select all answers that apply.

Q7 - How does an applicant learn about your ordinance standards and process? (N=180)

- Staff explains: (154) 86%
- Application form: (66) 37%
- Supporting materials: (63) 35%
- Ordinance: (61) 34%
Q8 - Which of the following materials must be submitted as part of a conditional use application? (N=180)

- Site plan: 157 (87%)
- Plan of operation: 123 (68%)
- Application form: 105 (58%)
- Architectural details: 100 (56%)
- Form with specific CUP standards: 84 (47%)
- Other: 15 (8%)

Other responses include pre-application meeting, documentation of public notice, staff findings of fact, town recommendation form, and information or documentation about proposed use.
Q9 - How is the public notified that a conditional use has been requested in your community? (N=180)

- Mail notification: (149) 83%
- Official newspaper: (139) 77%
- Notice 2 weeks prior: (116) 64%
- Municipal website: (110) 61%
- Physical posting: (85) 47%
- Towns notified: (74) 41%
- No special notice: (5) 3%
Q10 - Does your ordinance include any of the following standards for conditional uses? (Please focus on the concept described rather than the exact wording of the standard.) (N=160)

Standards ranked: most common – least common

1. No harm to public health or safety 91%
2. Compatible with surrounding uses 86%
3. Adequate site access and traffic safety 81%
4. Consistent with the comprehensive plan 78%
5. Served by adequate utilities and public facilities 71%
6. Proper drainage and stormwater management 67%
7. No harm to the environment (air, water, etc.) 63%
8. Preservation of neighborhood character 55%
9. Maintenance of property values 36%
10. Architectural appeal or aesthetics 29%
11. Other 8%

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Q11 - Below are the standards you indicated are included in your ordinance. Which of these standards are the most difficult to apply? Please arrange the items in rank order with 1 being the most difficult.

Standards ranked: most difficult – least difficult

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>No harm to public health or safety</td>
</tr>
<tr>
<td>2</td>
<td>Compatible with surrounding uses</td>
</tr>
<tr>
<td>3</td>
<td>Maintenance of property values</td>
</tr>
<tr>
<td>4</td>
<td>Preservation of neighborhood character</td>
</tr>
<tr>
<td>5</td>
<td>Consistent with the comprehensive plan</td>
</tr>
<tr>
<td>6</td>
<td>No harm to the environment (air, water, etc.)</td>
</tr>
<tr>
<td>7</td>
<td>Architectural appeal or aesthetics</td>
</tr>
<tr>
<td>8</td>
<td>Served by adequate utilities and public facilities</td>
</tr>
<tr>
<td>9</td>
<td>Adequate site access and traffic safety</td>
</tr>
<tr>
<td>10</td>
<td>Proper drainage and stormwater management</td>
</tr>
</tbody>
</table>
Part III: Changes to Conditional Use Law

In 2017, Wisconsin Act 67 added new language to state statutes regarding conditional uses. Previously, the term did not appear in state statutes and legal guidance derived primarily from court cases. State statutes now provide a definition and process for considering conditional uses. A class 2 notice and public hearing are required. Local governments must also provide substantial evidence (meaning facts and information) showing that ordinance requirements and conditions are reasonable, measurable, and relate to the ordinance purpose. Likewise, the applicant must provide substantial evidence showing that the ordinance requirements and conditions can be met. If the applicant meets or agrees to meet the requirements, the local government is required to issue the conditional use permit.

Q12 - Is your community aware of these changes? (N=159)

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<tbody>
<tr>
<td>No</td>
<td>(20)</td>
</tr>
<tr>
<td>Yes</td>
<td>(139)</td>
</tr>
</tbody>
</table>
Q13 - Have you made changes to how you handle conditional uses as a result of these changes? (N=158)

Yes  (76) 48%

No   (58) 37%

In progress (24) 15%
Q14 - If you did not make any changes, why? (N=58)

<table>
<thead>
<tr>
<th>Reason</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adequate standards</td>
<td>47</td>
<td>81%</td>
</tr>
<tr>
<td>Not aware of change</td>
<td>12</td>
<td>21%</td>
</tr>
<tr>
<td>Lack time/resources</td>
<td>12</td>
<td>21%</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
<td>19%</td>
</tr>
<tr>
<td>Not a priority</td>
<td>8</td>
<td>14%</td>
</tr>
<tr>
<td>Political difficulty</td>
<td>4</td>
<td>7%</td>
</tr>
</tbody>
</table>

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Q15 - What changes did you already make, or do you think you need to make?

Changes ranked: most common – least common

<table>
<thead>
<tr>
<th>Rank</th>
<th>Change</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Review standards or conditions to make sure they are reasonable and measurable</td>
<td>88</td>
</tr>
<tr>
<td>2.</td>
<td>Review ordinance purpose statements to make sure they provide justification for standards and conditions</td>
<td>64</td>
</tr>
<tr>
<td>3.</td>
<td>Allow certain types of uses through a different process (i.e. permitted use, rezone, or planned unit development)</td>
<td>49</td>
</tr>
<tr>
<td>4.</td>
<td>Review and reduce number of conditional uses allowed in ordinance</td>
<td>47</td>
</tr>
<tr>
<td>5.</td>
<td>Add specific standards or conditions for uses that are frequently granted or high impact</td>
<td>40</td>
</tr>
<tr>
<td>6.</td>
<td>Require class 2 notice</td>
<td>34</td>
</tr>
<tr>
<td>7.</td>
<td>Require public hearing</td>
<td>20</td>
</tr>
<tr>
<td>8.</td>
<td>Other responses include insert language from Act 67, update definitions and terminology, improve application forms and handouts, and change body responsible for making conditional use permit decisions</td>
<td>25</td>
</tr>
</tbody>
</table>
Q16 - The Center for Land Use Education is looking for examples of recently updated ordinances, processes, forms, handouts and websites that can serve as examples for other communities. If you have resources that you would like to share, please provide us with a link and brief description.

- Door County  https://www.co.door.wi.gov/493/Zoning-Other-Ordinances
- St Croix County  http://online.encodeplus.com/regs/stcroixcounty-wi/index.aspx
- Trempealeau County  https://co.trempealeau.wi.us/government/county_ordinances.php
- City of Madison  https://www.cityofmadison.com/development-services-center/land-development/private-property/conditional-use
- City of Wausau  https://library.municode.com/wi/wausau/codes/
- Village of Kronenwetter  https://www.kronenwetter.org/department/zoning_forms.php
- https://ecode360.com/31342798
- Village of Mount Pleasant  https://ecode360.com/36326935
- Village of West Baraboo  https://villageofwestbaraboo.com/village-ordinances/
The Center for Land Use Education (CLUE) is surveying Wisconsin planning and zoning staff, local elected and appointed officials, and others involved in local government to understand best practices and challenges related to zoning.

Please participate! We ask that you forward this survey to individuals in your community that are most familiar with the practice of zoning, conditional use permits, and ordinance updates. All levels of government are invited to participate, including counties, towns, cities, and villages.

In this survey, the term conditional use means a use allowed under a conditional use permit, special exception, or other special zoning permit issued by the local government. A conditional use is not the same as a variance.

The survey should take approximately 15 minutes to complete. You may answer anonymously or share your contact information. Please complete by Wednesday, September 23, 2020.

Questions? Please contact:
Becky Roberts rroberts@uwsp.edu
Lynn Markham lmarkham@uwsp.edu
Part I: General Questions

1. Who is completing this survey?
   ___ Planning staff
   ___ Zoning staff
   ___ Elected or appointed official
   ___ Clerk or administrator
   ___ Consultant
   ___ Other: _______________________

2. What level of government do you represent?
   ___ Town
   ___ Village
   ___ City
   ___ County
   ___ Other: _______________________

3. Local governments have flexibility to assign decision-making responsibility for conditional use permits to one of three bodies, as described in their local zoning ordinance. Please indicate which body has final authority to decide conditional use permits in your jurisdiction.
   ___ Zoning board of adjustment or appeals
   ___ Plan commission or zoning committee
   ___ Governing body
   ___ Other: _______________________

4. In an average year, approximately how many conditional use permit applications are filed in your community?
   ___ #

5. Roughly what percent of conditional use permits are approved?
   ___ less than 25%
   ___ 25–49%
   ___ 50–74%
   ___ 75% or more

6. What are the most common reasons for denying a conditional use permit?
   ___ Application is not complete
   ___ Applicant does not meet one or more standards found in the ordinance
   ___ Local government is unable to craft conditions that make the use acceptable
   ___ Applicant is unwilling to meet ordinance standards or conditions
   ___ Other, please describe:
Part II: Process and Standards

The following questions ask about the process for granting conditional use permits in your community. There are no right or wrong answers. Please select all answers that apply.

7. How does an applicant learn about your ordinance standards and process?
   ___ The applicant is required to look at the ordinance and familiarize themselves with the standards
   ___ A handout or checklist explains the process and ordinance standards
   ___ Designated staff or officials are available to review the process and standards
   ___ The application form prompts the applicant to describe how they meet each standard

8. Which of the following materials must be submitted as part of a conditional use application?
   ___ A general application form that applies to all zoning and land use approvals
   ___ A special application form that lists the standards for granting a conditional use
   ___ A site plan showing the physical layout of the site including buildings, drainage, etc.
   ___ A plan of operation describing operating hours and other business details
   ___ Architectural plans, drawings or renderings
   ___ Other, please specify:
9. How is the public notified that a conditional use has been requested in your community?

___ Notice is posted on our municipal website
___ Notice is posted in several physical locations throughout our community
___ Notice is published in our official newspaper
___ A sign is posted directly on the property describing the proposed use
___ Notice is sent to property owners within a specified distance
___ Notice is sent to impacted towns (for towns that participate in county zoning)
___ Notice is provided at least two weeks before the public hearing
___ We do not provide any specialized form of notice

10. Does your ordinance include any of the following standards for conditional uses? (Please focus on the concept described rather than the exact wording of your standards).

___ No harm to public health or safety
___ Compatible with surrounding uses
___ Served by adequate utilities and public facilities
___ Adequate site access and traffic safety
___ Proper drainage and stormwater management
___ No harm to the environment (air, water, etc.)
___ Maintenance of property values
___ Preservation of neighborhood character
___ Architectural appeal or aesthetics
___ Consistent with the comprehensive plan
___ Other, please describe:

11. Below are the standards you indicated are included in your ordinance. Which of these standards are the most difficult to apply? Please arrange the items in rank order with 1 being the most difficult.
Part III. Changes to Conditional Use Law

In 2017, Wisconsin Act 67 added new language to state statutes regarding conditional uses. Previously, the term did not appear in state statutes and legal guidance derived primarily from court cases. State statutes now provide a definition and process for considering conditional uses. A class 2 notice and public hearing are required. Local governments must also provide substantial evidence (meaning facts and information) showing that ordinance requirements and conditions are reasonable, measurable, and relate to the ordinance purpose. Likewise, the applicant must provide substantial evidence showing that the ordinance requirements and conditions can be met. If the applicant meets or agrees to meet the requirements, the local government is required to issue the conditional use permit.

12. Is your community aware of these changes?
   ___ Yes
   ___ No

13. Have you made changes to how you handle conditional uses as a result of these changes?
   ___ Yes
   ___ No
   ___ We are in the process of making changes

14. If you did not make any changes, why?
   ___ I was not aware of the statutory changes
   ___ Our process and standards are adequate
   ___ We do not have the time or resources to make changes
   ___ Changes are not a priority
   ___ Changes are politically difficult to make
   ___ Other, please describe:
15. What changes did you already make, or do you think you need to make?

___ Require class 2 notice
___ Require public hearing
___ Review standards or conditions to make sure they are reasonable and measurable
___ Review ordinance purpose statements to make sure they provide justification for our standards and conditions
___ Review and reduce the number of conditional uses allowed in our ordinance
___ Add specific standards or conditions for uses that are frequently granted or high impact
___ Allow certain types of uses through a different process (i.e. permitted use, rezone, planned unit development)
___ Change the body responsible for making conditional use permit decisions
___ Other, please describe:

16. The Center for Land Use Education is looking for examples of recently updated ordinances, processes, forms, handouts and websites that can serve as examples for other communities. If you have resources that you would like to share, please provide us with a link and brief description. Alternately, please provide contact information if you would like for us to contact you to share lessons learned or other information.

Thank you for completing this survey!