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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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| <b>2003 Senate Bill 237</b>   | <b>Senate<br/>Amendment 1</b> |
| <i>Memo published:</i> February 13, 2004 <span style="float: right;"><i>Contact:</i> Mary Offerdahl, Staff Attorney (266-2230)</span> |                               |

Under *current law*, a zoning agency (e.g., a county zoning agency, town zoning committee, village board, or city plan commission) of a county, city, village, or town authorized to enact zoning ordinances may issue a conditional use permit. A conditional use permit authorizes a property owner to put property to a use permitted under the applicable zoning ordinance as long as certain conditions are met.

Under *2003 Senate Bill 237*, a county zoning agency, city council, city plan commission, city plan committee of the city council, board of appeals, and by statutory reference village presidents, village boards, and village officials may not do any of the following:

- Withhold approval of a conditional use permit based on a reason that is not directly related to the requested conditional use permit.
- Condition the approval of a conditional use permit on the property owner taking some action or refraining from some action with respect to an existing use of the property, or any improvements to the property, that are not directly related to the requested conditional use permit.

*Senate Amendment 1* adds “town board” and “town zoning committee” to the specified zoning agencies that may not withhold or condition approval of a conditional use permit under the specified circumstances, and replaces the specified circumstances in the original bill (bulleted above) with a prohibition stating that the specified zoning agencies may not:

- Condition or withhold approval of a conditional use permit based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.

### Legislative History

On February 2, 2004, the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform introduced Senate Amendment 1; recommended adoption of Senate

Amendment 1 by a vote of Ayes 5, Noes 0; and recommended passage of 2003 Senate Bill 237, as amended, by a vote of Ayes 4, Noes 1.

MO:rv



22 EAST MIFFLIN STREET, SUITE 900  
MADISON, WI 53703  
TOLL FREE: 1.866.404.2700  
PHONE: 608.663.7188  
FAX: 608.663.7189

## MEMORANDUM

TO: Honorable Members of Wisconsin State Senate  
FROM: Craig Thompson, Legislative Director  
DATE: February 26, 2004  
SUBJECT: Senate Bill 237

The Wisconsin Counties Association (WCA) opposes Senate Bill 237 (SB 237), which limits the reasons a local government may withhold approval of a conditional use permit. WCA opposes SB 237 because it places unnecessary strict limitations on zoning decision makers. Adequate protection against unreasonable or unrelated conditions being placed on the granting of a conditional use permit already exists. Under current law, a governmental body issuing conditional use permits cannot arbitrarily deny an applicant a permit. The reasons for denial must be reasonably related to the requested conditional use permit, as must any conditions of approval.

SB 237 imposes a more stringent standard of "directly related". WCA believes this language ties the hands of local decision makers at a time when they need more flexibility not less.

In addition, WCA believes that legislating a new standard for imposing conditions on conditional use permits will almost certainly result in local governments being involved in costly litigation over the interpretation of what constitutes "directly related".

WCA respectfully requests that you vote against SB 237.

Thank you for considering our comments.



FEB 25 2004

To: Members of the Wisconsin State Senate

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities  
Ed Huck, Executive Director, Wisconsin Alliance of Cities

Date: February 25, 2004

Re: **Opposition to SB 237, Limiting the Reasons for Which a Municipality May Deny a Conditional Use Permit**

The League of Wisconsin Municipalities and the Wisconsin Alliance of Cities oppose Senate Bill 237 even if amended as recommended by the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform. While Senate Amendment 1 narrows the bill's limitation on municipal zoning powers, it nevertheless restricts the ability of a municipality to regulate land use according to its comprehensive plan and the wishes of the residents of the community.

The amendment prohibits municipal zoning agencies from withholding or conditioning approval of a conditional use permit based upon the property owner entering into a contract or discontinuing, modifying, extending or renewing any contract with a third party, such as a billboard company, under which the third party is engaging in a lawful, though nonconforming, use of the property.

The intent of this bill is to prohibit a municipality from conditioning the granting of a conditional use permit on the property owner agreeing to end its business arrangement with a billboard company using the property to site a nonconforming billboard. This bill will eliminate an important method municipalities use to eliminate such nonconforming uses consistent with the community's comprehensive plan and the wishes of the residents of the community.

Local government officials oppose Senate Bill 237 because it places limitations on zoning decision makers. Adequate protections against unreasonable or unrelated conditions being placed on the granting of a conditional use permit already exist. Under current law, a governmental body issuing conditional use permits cannot arbitrarily deny an applicant a permit. The reasons for denial must be reasonably related to the requested conditional use permit, as must any conditions of approval.

We believe SB 237, even as amended, too strictly ties the hands of local decision makers at a time when they need more flexibility, not less, in order to implement their comprehensive plans and zoning regulations.

## Gilbert, Melissa

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**From:** Offerdahl, Mary  
**Sent:** Thursday, February 12, 2004 3:14 PM  
**To:** Gilbert, Melissa  
**Cc:** Sweet, Richard; Shovers, Marc; Dyke, Don  
**Subject:** SB 237 (conditional use permits) clarification?

Hi Missy,

I just called and you're out for the afternoon, so I'm sending this email. As I was writing the amendment memo for SB 237, relating to limiting the reasons for which a local government may withhold approval of a conditional use permit, I noticed that the prohibition created by the amendment in s. 59.69 (2) (bm), Stats., could be read as applying only to one of what might be two types of county zoning agencies. The county zoning agency discussed in par. (bm) has a head appointed by the county executive or county administrator under sub.(10) (b) 2. that "shall have the **administrative** powers and duties specified for the county zoning agency,,," and thus "the county zoning agency shall be only a policy-making body determining the broad outlines and principles governing such administrative powers and duties..."

Such a zoning agency might be different than a zoning agency under par. (a) that did not have such a head, and therefore would itself have the administrative powers and duties specified for a county zoning agency.

To ensure that the prohibition in the amendment applies to all county zoning agencies, and not just the type described in par. (bm), you might want to take the prohibition created by the amendment out of par. (bm) and create a third paragraph starting "No county zoning agency may ...."

I discussed this with the drafter, Marc Shovers, and he is willing to draft this as clarification if you would like. I told Marc we'd get back to him on whether you would like him to do that.  
Please let me know if you have any questions. Mary

Mary Offerdahl  
Staff Attorney  
Legislative Council

**Gilbert, Melissa**

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**From:** Vick, Hannah  
**Sent:** Wednesday, January 28, 2004 5:01 PM  
**To:** Gilbert, Melissa  
**Subject:** FW: SB 237

-----Original Message-----

**From:** Curt Witynski [mailto:witynski@lwm-info.org]  
**Sent:** Wednesday, January 28, 2004 4:54 PM  
**To:** Sen. David Zien; Sen. Bob Wirth; Sen. Scott Fitzgerald; Sen. Roger Breske; Senator Ron Brown  
**Cc:** stohr@wicounties.org  
**Subject:** SB 237

**To:** Members of the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform  
**From:** Curt Witynski, Assistant Director, League of Wisconsin Municipalities  
Matthew Stohr, Wisconsin Counties Association  
**Date:** January 28, 2004  
**Re:** **Opposition to SB 237, Limiting the Reasons for Which a Municipality May Deny a Conditional Use Permit**

The League of Wisconsin Municipalities and the Wisconsin Counties Association oppose Senate Bill 237, limiting the reasons for which a local government may withhold approval of a conditional use permit. A committee vote on the bill is scheduled for tomorrow.

Local government officials oppose Assembly Bill 493 because it places unnecessarily strict limitations on zoning decision makers. Adequate protection against unreasonable or unrelated conditions being placed on the granting of a conditional use permit already exists. Under current law, a governmental body issuing conditional use permits cannot arbitrarily deny an applicant a permit. The reasons for denial must be *reasonably related* to the requested conditional use permit, as must any conditions of approval.

This bill imposes a more stringent standard of "directly related." We believe this too strictly ties the hands of local decision makers at a time when they need more flexibility not less.

We also believe that legislating a new standard for imposing conditions on conditional use permits will almost certainly result in local governments being involved in costly litigation over the interpretation of what constitutes "directly related."

We urge you to vote against recommending passage of this unnecessary legislation. Thanks for considering the comments and concerns of local governments.

# OAAW

OUTDOOR ADVERTISING ASSOCIATION OF WISCONSIN

44 EAST MIFFLIN STREET, SUITE 101  
MADISON, WISCONSIN 53703

608-286-0764

October 29, 2003

## MEMORANDUM

TO: Members of the Senate Committee on Homeland Security, Veterans and Military Affairs, and Government Reform

FROM: Janet R. Swandby and Kathi Kilgore, Lobbyists

RE: **Senate Bill 237 – Limits to Conditional Uses**

The members of the Outdoor Advertising Association of Wisconsin (OAAW) have encountered numerous examples of municipalities using their conditional use powers to force the removal of an outdoor advertising sign from private property.

Property owners have been forced to remove a billboard as a condition for acquiring an unrelated municipal permit (such as a building permit). A permit is not issued until the landowner agrees that the billboard on the property will be removed at the end of the lease between the owner of the billboard and the landowner.

### **What has been done in other states?**

These actions taken by municipalities violate the Fifth Amendment to the U.S. Constitution which requires all levels of government to pay just compensation for the taking of private property for public use. Many states have laws specifically prohibiting the use of this type of conditional use, including California, Arizona, Florida, Nevada, and Utah.

### **Why support SB 237?**

- This bill would protect legitimate businesses from being unfairly and arbitrarily shut down without compensation by local units of government.
- Municipalities can still remove any business which they find objectionable. The municipality can use its eminent domain powers and pay fair market value for the property/business.
- Legally challenging this practice is expensive – for both business owners and municipalities. Business owners should not have to spend money on an attorney to challenge a municipality's taking of their property. Challenges would mean protracted and expensive litigation, and the cost of defending these practices should not be borne by the taxpayer.
- Historically, even if their business is now a nonconforming use, owners expect to continue their businesses into perpetuity and have had the right to sell their businesses.

The members of OAAW ask you to vote to recommend passage of SB 237.



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Suite 300  
Madison, Wisconsin 53703-2215

608/267-2380  
800/991-5502  
Fax: 608/267-0645

E-mail: [league@lwm-info.org](mailto:league@lwm-info.org)  
[www.lwm-info.org](http://www.lwm-info.org)

To: Members of the Senate Committee on Homeland Security, Veterans and  
Military Affairs and Government Reform

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: October 28, 2003

Re: **Opposition to SB 237, Limiting the Reasons for Which a Municipality  
May Deny a Conditional Use Permit**

The League of Wisconsin Municipalities opposes Senate Bill 237, limiting the reasons for which a local government may withhold approval of a conditional use permit. A public hearing is scheduled on the bill tomorrow. Unfortunately, I'll not be able to testify because I'll be attending the League's Annual Conference, which starts tomorrow in Milwaukee.

Municipal officials oppose Senate Bill 237 because it places unnecessarily strict limitations on municipal zoning decision makers. Adequate protection for conditional use permit applicants already exists. Under current law, a municipal body issuing conditional use permits cannot arbitrarily deny an applicant a permit. The reasons for denial must be *reasonably related* to the requested conditional use permit, as must any conditions of approval.

This bill imposes the more stringent standard of "directly related." We believe this too strictly ties the hands of municipal decision makers at a time when they need more flexibility not less. We urge you to vote against recommending passage of this unnecessary legislation. Thanks for considering the comments and concerns of municipalities.



10/27/03 – Senate Bill 237 Anti-exaction legislation

I would like to thank you Mr. Chairman and the rest of the committee members for allowing me to come here today to speak in support of Senate Bill 237. My name is Helen Koppes and I am a small business owner in Madison, Wisconsin. I purchased a building last year to house my 4000 square foot retail store called RC Performance & Hobbies. This business sells remote control cars, trucks, airplanes, helicopters, boats, etc. We are a family friendly business.

My 33 year old son and I run the store. We have grown from four employees to ten in less than a year.

With that brief background, I will continue my comments related to the issue of today.

It is my understanding that Senate Bill 237 has been developed to prohibit local Planning and Zoning Commissions from attaching unrelated conditions to projects at hand. I have had first hand experience with this bureaucratic control process and am glad I have an opportunity to possibly influence changes to this anti-business restriction.

Let me continue with my experience.

First of all, I purchased this 4000 square foot commercial building...25 years old...with the intent of remodeling,

refurbishing, and updating antiquated electrical, plumbing and HVAC capabilities.

Related to your issue today, I must offer that this property, on the service road off Hwy 12& 18 has a billboard owned by Adams Sign company. The billboard provides me with \$5,000 a year in revenue which is a tremendous help in paying the property tax bill.

My vision was to take this "former bar" and create an attractive retail facility to house my store. I was able to update the interior and we now house an attractive clean and warm retail store serving our customers.

This site, zoned C3L was perfect for my vision of the retail store with a small race track for electric car and truck races in our back parking lot. No noise, no liquor, just good clean fun for the participants. My customers were thrilled with the prospect. I went to the city to confirm my plans were within the zoning constraints. This new racing application was not accepted and would require council action.

Trying to be a rule follower and abide by the "process" I hired a lawyer for guidance and the city council finally approved the addition of this racing activity within C3L zoning, but it would have to now go through the Conditional Use Permit process. I was warned by the planning and zoning staff that because I have a billboard on

my property, prior to approval of a conditional use permit, I would probably be encouraged to commit to a no lease renewal for the billboard. I couldn't afford to risk that \$5,000 in revenue. I simply gave up.

So, no race track is here, even though I know language within the zoning rules NOW allows me to go forward. Because I need a conditional use permit, I might as well just give it up, knowing the "billboard police" are going to "encourage" me to take action of no billboard lease renewal with Adams Sign.

I spent several hundred dollars in legal fees. The Council agreed the races would be fine, but my roadblock of a conditional use permit simply forced me to forget the idea.

This is a sadness for our community. We talk of having something for young people to get involved in. This activity is certainly healthier for them than drugs or alcohol. They get passionate; they get involved; they target their expenditures to parts and tools to "soup" up their radio control cars. How bad can this be?

When the youngsters ask for racing opportunities, I simply tell them that perhaps next year I can afford the legal process to fight for the cause, but I simply cannot afford more legal fees at this time.

As a mother of two grown sons (in their mid-30's) I have been amazed at the anti-business anti-youngster, climate of the City. Radio control cars, trucks and airplanes kept my sons out of mischief. My goal with this retail store was to provide inventory and opportunity for customers to enjoy in their free time. I have always felt it was better to keep kids active with hobbies than trying to bail them out of trouble. Keeping my sons busy succeeded in avoiding mischief in the case of my family. I am only sorry that I cannot provide this family focused fun for other youngsters. The bureaucrats won me on this one...I simply cannot afford the refurbishing of a track as well as legal counsel to "show me the way" through the labyrinth of bureaucratic meetings, policies, rules, and restrictive business initiatives. I am sorry for my customers who cannot take their hobby to a second step of sanctioned races, simple competition, and hobby building skills.

Every step I turned, the big bad billboard was placed against me. The sign causes me no problem...simply a small flow of revenue to help me meet property tax costs. The bureaucrats have won, but the youngsters have lost.

This legislation would prevent the bureaucrats from attaching unrelated conditions to projects at hand to a conditional use permit. The billboard is simply a small revenue flow for me. This legislation would force the city regulatory folks to focus on real issues, rather than meeting

-5-

the needs of some individuals who may be anti-business,  
anti-sign.

I strongly support Senate Bill 237.

Thank you for your consideration of my comments.



Good Morning and I would like to thank you Mr. Chairman.....and the rest of the committee members..... for allowing me to come here today to speak in support of Senate Bill 237. My name is Chris Eigenberger the General Manager with Adams Outdoor Advertising.

Adams is an outdoor advertising company located in Madison, Wisconsin. We, and our clients, employ thousands of individuals that affect each and every one of us on a daily basis, with hundreds of millions of dollars in payroll amongst ourselves. Our over 200 billboard structures are located in Dane, Columbia, Rock, Iowa, Jefferson, and Dodge counties. Throughout our area, we provide local "Main Street" businesses such as restaurants, shops, boutiques, hotels, and tourism destinations the ability to advertise their company and increase their profit margins. Companies as small as Waunakee Remodeling to companies as large as UW Hospitals utilize our advertising structures to reach their existing and potential customer bases in our market area.

Currently, Adams Outdoor is greatly affected by questionable practices from municipal Planning and Zoning Commissions and staff. These local authorities and staff are currently implementing policies from their governing bodies in city councils, village boards, and town councils without legislative approval. By misusing their power, these local governing bodies and employees are negatively affecting the outdoor advertising industry and our leaseholders.

When individuals, namely our lease holders, go to their local planning and zoning authority to receive a conditional use permit to beautify, reconstruct, or renovate one of their buildings, these bureaucratic bodies put together permits which allow for the requested work to be performed but there is also an additional condition attached. . . . . The additional condition often placed on the conditional use permit instructs that the owner of the property must have the billboard removed at the end of their lease with the outdoor advertising company, or institute a possible cancellation clause to the lease to have the billboard removed. This practice has happened multiple times to Adams Outdoor leaseholders within the past two years.

Because of their dislike for our industry, communities like these have been trying to eliminate our billboards by abusing conditional use permits granted to billboard lease holders. Not only are these local Planning and Zoning Authorities and their staff infringing on their residents' rights, they are trying to take our billboards without giving us just compensation for the structure itself, which is statute under both state and federal law.

Adams Outdoor enjoys great relationships with our lessors throughout our market area. They appreciate the work that we do and at the same time they receive compensation for allowing us the ability to use their land with our quality-advertising medium. These Planning and Zoning Boards do not see it that way, nor do they care about the symbiotic relationships we have cultivated with our lessors. They would rather hurt the small businesses utilizing our billboards to advertise their products and services.

A great example of a Local Planning and Zoning Board gross misuse of authority occurred recently: A lessor who owns many buildings in the City of Madison went to the City's Planning and Zoning Department to receive a conditional use permit to renovate one of the buildings he

owns. This would not only beautify and therefore increase the value of his property, but it would also result in a beautification of the area around his property. The City agreed to give him a conditional use permit, on the added condition that he must have a billboard structure on a different piece of land that he owns removed when the lease expires. The landowner has refused to this point and plans to stay the course until something is done to rectify his situation and stop the extortionary tactics that this Local Planning and Zoning Authority has taken against him and our industry.

This issue not only affects the outdoor advertising industry, but it also affects "Main Street" businesses as well. An example of this can be drawn from a hypothetical gentleman who owns an automobile repair shop comprised of multiple buildings on adjoining parcels of land. The municipality, where this gentleman owns and operates his business, has shown a desire for a treatment plant in the general area of his establishment. The owner of the business applies for a conditional use permit to renovate his main building. The city grants his permit with the condition that he removes some of the secondary buildings and allow for the land to be used by the city for the treatment plant they desire. Through the city's unreasonable manipulation of the business owner's desire to enhance his business they obtain their objective of developing a treatment plant without giving the owner suitable compensation for his land and loss of work space.

Senate Bill 237 abolishes this misuse of power from Local Zoning and Planning Authorities and staff. If individuals want to apply for a conditional use permit, these authorities must attach conditions that are only and I repeat only relevant to the project at hand rather than attaching conditions that are entirely unrelated. There is no telling what these governing bodies or their staff could do to local homeowners, small business owners, or the community at large with the power they currently possess.

Thank you for your time and thoughtful consideration in support of this bill.

9

**Town of Grand Chute Site Plan Review and Analysis  
Auto Paint Specialists, 2120 Nordale Drive**

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To: Plan Commission

From: Allen Davis, Community Development Director

Date: March 14, 2002

Subject App. #:SP-11-02

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**A. REQUEST.**

1. **Proposed Use(s):** Warehouse expansion
2. **Project Description:** Addition of an 2,300-sq. ft. building.

**B. ANALYSIS - see attached worksheet.**

**C. RECOMMENDATION**

Plan Commission approves the Site Plan with the following conditions:

1. The applicant shows that he has title to the additional land east of the building.
2. The north and west building elevations include at least 35% masonry.
3. The non-conforming billboard is removed at the end of the current lease - date to be provided to the Town.





"Appleton city government exists to provide quality services responsive to the needs of the community."

## PLANNING DEPARTMENT

100 North Appleton Street  
 Appleton, WI 54911  
 Telephone: (920)832-6460  
 Fax: (920)832-5993

December 19, 2002

VIA FAX 733-4731 & U.S. MAIL

Mr. Calvin Tollefson  
 Harris & Associates, Inc.  
 2718 North Meade Street  
 Appleton, WI 54911

RE: **SITE PLAN #02-55 - Harry Wendlandt Co., Inc. - 1500 North Ballard Road**

Dear Calvin:

On December 18, 2002, the Site Plan Review Committee reviewed Site Plan #02-55 for a building addition and parking lot paving at Harry Wendlandt Co., Inc., 1500 North Ballard Road. Before the Site Plan can be approved, the following is needed:

- THE J.M.W.*
1. According to Section 23-132 (h)(8) of the current Zoning Ordinance, the minimum parking setback from a residential property line is fifteen (15) feet. The proposed parking area along the east lot line encroaches into the required setback. Resolution may be obtained by either applying for and receiving a Variance from the Zoning Board of Appeals or redesigning the parking layout in conformity with the parking setback requirement of the M-2 General Industrial District.
  2. One (1) parking space shall be provided for all the company vehicles. Revise the parking calculation by indicating the number of the company's trucks/vehicles associated with the business. If there are trucks/vehicles associated with the business, indicate the location of where the company vehicles will be parked. The company vehicles may be stored inside the building to meet the parking requirement.
  3. According to Section 23-172(n) of the current Zoning Ordinance, the minimum loading space dimension for a warehouse is 12 feet x 60 feet. Revise the length dimension of the loading area from 30 feet to 60 feet. Also revise the location of the access aisle to avoid crossing the loading area or revise the location of the loading area. The loading area may be located in the existing building.

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APPLETON PLANNING

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4. Revise the length dimension of the access aisle for the handicapped parking space from 18 feet to 20 feet minimum.
5. The existing wood fence on the neighbor's property to the east (Lot 20 of Bell Air Subdivision) can be used at this time to provide the required parking lot buffer. Add a note to the Site Plan that states something similar to the following:
  - If the existing fence on Lot 20 of Bell Air Subdivision is removed, the parking lot buffer requirements would need to be met by Harry E. Wendlandt Co., Inc. or their respective successors, representatives and assigns, and all persons who may hereafter acquire an interest in the property or any part thereof at that time.
6. Show the existing overhead electric and telephone lines. It appears the existing power pole located within the parking lot will affect the traffic flow. State whether or not this existing power pole will be removed or relocated.
7. On a field visit, it was observed that two (2) existing dumpsters located at the northeast corner of the property are not screened with an enclosure. The dumpsters will need to be screened with an enclosure.
  - Show an elevation of a proposed enclosure with dimensions, materials, and colors. Materials should be an alternating board-on-board wood fence. The Refuse Container and Enclosure Standards are attached. You may contact Todd Nett at 732-6051 regarding the dumpster placement, enclosure design, and size.
8. Change the designation of "existing sign" to "existing billboard". Also, the lease for the existing billboard on the property may not be renewed. The property owner must provide a copy of the lease agreement for the existing billboard to the Planning Department prior to Site Plan Approval.
9. Change the caliper size of the Skyline Locust to 2-1/2" diameter, and change the size of the Globe Arborvitae to 3 feet high maximum to meet City Standards.
10. Provide sanitary, storm, and water main information per email from the Department of Public Works.
11. Show where the existing asphalt pavement ends.
12. It appears that drainage and snow melt in the southwest corner of the property will drain south onto the neighboring property. Provide additional information. If it is to drain south, provide an easement from the adjacent property owner.
13. Show the location of the roof drains. State whether or not they will be tied into the storm sewer.
14. Show the pitch of storm sewer laterals and interior conduit. Show pipe sizing calculations. Show cross section of catch basins/manholes.

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APPLETON PLANNING

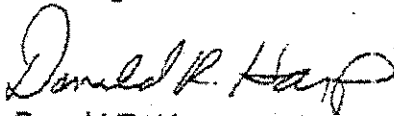
PAGE 04

*Bill S. From H. Wendlandt 1/11*

- No lighting is shown on this site; none is approved. Lighting may not be installed on the property or building until it is reviewed and approved by the Planning Department. All exterior lighting fixtures, either mounted on the building or freestanding, shall be installed with full-cut-off shielding that reflects light downward to avoid light spilling over onto adjacent properties and shall be designed and installed so the light source is not visible at property lines. The City recommends sufficient lighting and metal halide fixtures to increase natural surveillance of the property.
- No new signs are shown, and no new signs are approved.
- The design and construction of the concrete pad for the dumpster placement must bear the weight of the City of Appleton's refuse trucks. The developer must assume any responsibility for damage to the concrete from the City's refuse trucks.
- The General Notes for All Projects in the City of Appleton is attached and should be reviewed and followed.

Please contact me at 832-6466 if you have any questions or concerns.

Best regards,



Donald R. Harp  
Principal Planner II

Enclosures

cc: Alderperson Charlie J. Goff  
Laura Johnston, Planning Director  
Sindee Kleckner, Deputy Director, Planning  
Fire Marshal Vernon Green, Station #1  
Dan Dibbs, Fire Department  
Tom Ebel, Inspections  
Sue Olson, Public Works  
John Peters, Erosion Control  
Rudy Nyman, Police

*[Handwritten initials]*  
*[Handwritten initials]*  
JW

c. The Implementation Plan Document (when signed by all parties involved) must be filed in the Outagamie County Register of Deeds' office, and a copy of the recorded document shall be provided to the City of Appleton Planning Department.

d. The Ordinance exceptions for this Planned Development are as follows:

- A gross area of 0.22 acre (minimum 2 acres required in Ordinance).

(5-0) (CPC meeting 04-08-02)

6. Special Use Permit #9-02 – Hide-A-Way Tavern (Continued from the 04-08-02 PC meeting)

To conform and expand the existing tavern located at 1400 West Wisconsin Avenue **BE APPROVED** to run with the land as shown on the attached Development Plan with the following stipulations:

- a. Any expansion of a tavern or restaurant with alcohol sales use requires approval of a premise description amendment of the existing liquor license from the License and Ordinance Committee and Common Council.
- b. A variance from the Board of Zoning Appeals must be acquired for the refuse enclosure to be located in the front yard (along Kamps Avenue).
- c. The lease for the existing billboard on the property may not be renewed. The property owner must provide a copy of the lease agreement for the existing billboard to the Planning Department prior to approval of this Special Use Permit by the Common Council.

(6-0)

7. Special Use Permit #10-02 – The 10<sup>th</sup> Frame LLC

To reopen and conform the existing tavern use located at 618 West Wisconsin Avenue **BE APPROVED** to run with the land as shown on the attached Development Plan with the following stipulations:

- a. Prior to Common Council review and approval, a cross easement for vehicular access between parcel numbers 6-0709 and 6-0705 must be filed in the Outagamie County Register of Deeds' office, and a copy of the recorded document shall be provided to the City of Appleton Planning Department.
- b. The applicant shall apply for and receive a Liquor License from the City Clerk prior to serving alcohol on the subject site.
- c. All City of Appleton Health and Fire Codes must be met, and a health and fire inspection must be conducted prior to issuance of a Liquor License.
- d. Parking lot striping for customer and employee parking is required to be completed by July 1, 2002.

**SCHOENBOHM & SCHOENBOHM, S.C.**

ATTORNEYS AT LAW  
206 S. MEMORIAL DRIVE  
APPLETON, WI 54911-5839

MICHAEL P. SCHOENBOHM

E-MAIL: schoenbo@athenet.net

PHONE (920) 735-5858

RICHARD B. SCHOENBOHM

FAX (920) 735-5840

May 31, 2002

Orde Advertising, Inc.  
Attn: Jim Wehausen  
P.O. Box 5036  
DePere, WI 54115-5306

Re: Sign Lease #7445

Dear Jim:

I apologize for not getting back to you sooner regarding the above-referenced lease. Additional issues surfaced that impacted the church's decision to proceed with the lease extension we discussed previously.

Unfortunately, I must advise you that the church cannot extend the lease. Accordingly, please consider this letter as the 90 day written notice for removal of the sign. We regret that we couldn't move forward with a new lease, and sincerely appreciate all your efforts in attempting to bring that to pass.

Please advise approximately when we can expect the sign to be removed. Thank you for your attention.

Very truly yours,

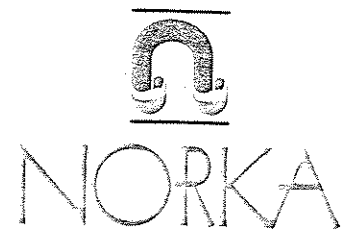


MICHAEL P. SCHOENBOHM

MPS:mks

c: Marty Myse

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November 4, 1998

Orde Advertising Inc.  
1825 Nimitz Drive  
DePere, WI 54115

Gentlemen:

Please be informed that you are to remove the sign on our property, located at 3001 E. Newberry Street, Appleton, WI (formerly W3471 Newberry Street) as soon as possible following the expiration of our contract with you on February 28, 2003.

Thank you.

Respectfully,

Norm Sutter  
President

cc: Appleton Planning Dept. Attn: Cindy Fax: 832-5993  
(Attached copy of Orde Advertising contract)  
Utschig-Ziegler Construction  
File

W3471 NEWBERRY ST.  
APPLETON, WI 54915  
TEL. 414.733.1145  
1.800.866.6752  
FAX. 414.733.4806



44 EAST MIFFLIN STREET, SUITE 101  
MADISON, WISCONSIN 53703  
608-286-0764

**MEMORANDUM**

TO: All State Legislators

FROM: Janet R. Swandby and Kathi Kilgore, Lobbyists

RE: **Bill to prohibit use of exaction by municipalities**

*- RB signed on 8/5/03  
- bill will likely come to RBs Committee  
- Kelly Met*

The members of the Outdoor Advertising Association of Wisconsin (OAAW) have encountered numerous examples of municipalities using exaction to force the removal of an outdoor advertising sign from private property. OAAW asks you to be a sponsor of the bill offered by Senator Scott Fitzgerald and Representative Terri McCormick.

**What is Exaction?**

“Exaction” means to call for, demand, require, force or compel. In local land-use governance, exaction is an example of a conditional use requirement.

**Why is the use of exaction a problem?**

In recent years, municipalities have begun using exaction instead of paying just compensation for the removal of a nonconforming sign on private property.

The OAAW has numerous examples of local governments requiring property owners to have a billboard removed as a condition of approval for a municipal permit (such as a building permit). In most instances, the local government will not issue a permit to a landowner until he agrees that the billboard on the property will be removed at the end of the lease between the owner of the billboard and the landowner.

**What has been done in other states?**

The Fifth Amendment to the U.S. Constitution requires all levels of government to pay just compensation for the taking of private property for public use. Municipalities which use exaction are sidestepping the amendment.

Many states have laws prohibiting the use of exaction. These states include California, Arizona, Florida, Nevada, and Utah.

**What are the arguments in favor of a proposal to prohibit exaction?**

1. This bill would protect legitimate businesses from being unfairly and arbitrarily shut down without compensation by local units of government.
2. Legally challenging exaction is expensive – for both business owners and municipalities. Business owners should not have to spend money on an attorney to challenge a municipality’s use of exaction to take their property. Challenges to exaction would mean protracted and expensive litigation. The cost of defending these ordinances should not be borne by the taxpayer.
3. Municipalities can still remove any business which it find objectionable. The municipality can use its eminent domain powers and pay fair market value for the property/business.
4. Historically, even if their business is now a nonconforming use, owners expect to continue their businesses into perpetuity and have had the right to sell their businesses.
5. If municipalities are allowed to use exaction, very valuable business use of property can be reduced to zero overnight.

**Who should I contact about this proposal?**

Janet Swandby or Kathi Kilgore of Coenen/Swandby Associates, Inc. Phone number is 608.286.0764. Email: [Swandby@swandby.com](mailto:Swandby@swandby.com) and [Kilgore@swandby.com](mailto:Kilgore@swandby.com).





44 EAST MIFFLIN STREET, SUITE 101  
MADISON, WISCONSIN 53703  
608-286-0764

**MEMORANDUM**

TO: Members of the Senate Committee on Homeland Security, Veterans and Military Affairs, and Government Reform

FROM: Janet R. Swandby <sup>Janet</sup> and Kathi Kilgore, Lobbyists

RE: **Exaction - Amendment to SB 237**

During the hearing on Assembly hearing on the companion to SB 237 (AB 493), some concerns were raised. Some members of the Assembly Committee were concerned that the bill would eliminate a large number, if not all, conditional uses. Some Assembly Committee Members were concerned that the bill's effects would be too broad.

As a result, Senator Fitzgerald has had an amendment drafted (copy attached) to narrow the impact of the bill. The amendment focuses on the contract between the sign owner and the landowner. As amended, SB 237 would prohibit very specific types of conditional uses. Municipalities could not prevent a landowner from entering into a contract with a third party. The amended bill would also prevent a municipality from requiring that a contract with a third party be discontinued, modified, extended, or renewed.

**The passage of this bill is essential to protect the property rights of landowners and sign owners.** As was described in the hearing on SB 237, some municipalities are abusing their powers and the only recourse for a small business owner is to challenge the municipality's actions in court. Such a court challenge would be extremely expensive.

We believe that the amendment language will address the situations that owners of outdoor advertising signs have encountered, but will not significantly affect conditional uses as a tool used by municipalities.

OAAW urges you to support this amendment and recommend passage of SB 237. If you have any questions, please give us a call at 608.286.0764 or email us at [Swandby@swandby.com](mailto:Swandby@swandby.com) or [Kilgore@swandby.com](mailto:Kilgore@swandby.com).

WI Towns Assoc.  
April 2003

## BILLBOARD CONTROL AT THE TOWN LEVEL – TWO MODEL ORDINANCES

Over the course of my career with UW-Extension I traveled virtually every highway, most county roads, and many town roads. Sometimes I covered 1000 miles a week within Wisconsin. We have a beautiful state. Unfortunately we are also a leader in the number of illegal billboards. And construction continues on new ones.

While signage has an important role in helping businesses attract customers, in rural areas there are few businesses that need or want large, tall billboards. Clearly, citizens do not want billboards that advertise products made and sold someplace else.

The most direct way to control billboards is by defining what types of signs are an "allowed use" or are a "conditional use" in each zoning district. If you are under county zoning you can advocate for more restrictive language in the county ordinance or you can ask that more of your town be put into more restrictive zoning districts. Limiting the amount of commercial and industrial zoning linearly along major highways confines large signs to areas with more intense commercial or industrial activity.

If your town has its own zoning ordinance, you have more discretion regarding the types of signs allowed in each district. Many towns have no need for commercial or industrial zoning. If commercial or industrial zoning is appropriate for part of your town, the placement of large signs can still require a conditional use permit and meet size and setback standards.

Finally, Sec. 60.23(29) Wisconsin Statutes provides a specific mechanism to control billboards. The authority is clear. Section 60.23(29) can be used to ban all signs or to ban signs that did not meet a certain standard. However, the basis for such regulations is highway safety. In other words, the controls would have to be based on the threat that signs pose to motorists and safe operation of vehicles. The use of zoning authority, in contrast, can be based on broader land use issues including Smart Growth considerations. Nevertheless, if your town is under county zoning and the county codes do not meet your needs, you can adopt your own billboard ordinance.

Citizens for Scenic Wisconsin is a non-profit voluntary organization dedicated to protecting the beauty of our state – especially the visual corridors along our public highways and public waterways. We have produced two model ordinances to facilitate your deliberations on the issue of billboards.

The first model is designed to strengthen billboard control in the county or town zoning ordinance.

The second model is designed for towns that want more control over billboards than the county zoning ordinance provides. The model language would ban all large and tall signs. These signs are typically built by outside firms to advertise products that are neither produced nor sold in the town.

Copies of the model ordinances can be downloaded from the Scenic Wisconsin website: [www.scenicwisconsin.org](http://www.scenicwisconsin.org) or by contacting us at 7525 Oakhill Avenue, Wauwatosa, WI 53213.

And be sure to have your attorney and local planning professionals review and modify the models to meet your needs.

Lowell Klessig  
Town of New Hope, Portage County  
Citizens for Scenic Wisconsin Board Member

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as of Wednesday, February 25, 2004

**2003-2004 legislative session**

**Legislative bills and resolutions**

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- Text, Sponsors and Analysis
- Status and Fiscal Estimate
- Lobbying Effort on this item

**Senate Bill 237**

limiting the reasons for which a local government may withhold approval of a conditional use permit.

| Organization |           | These organizations have reported lobbying on this proposal: | Place pointer on icon to display comments<br>click icon to display prior comments |          |          |
|--------------|-----------|--|---|----------|----------|
| Profile      | Interests |  | Date Notified   | Position | Comments |
| ●            | ●         | City of Milwaukee  | 10/13/2003  | ↓        |          |
| ●            | ●         | Kenosha County   | 12/3/2003   | ↓        |          |
| ●            | ●         | Kwik Trip Inc  | 2/3/2004  | ↑        |          |
| ●            | ●         | League of Wisconsin Municipalities                           | 9/4/2003  | ↓        |          |
| ●            | ●         | Outdoor Advertising Association of Wisconsin                 | 9/2/2003  | ↑        |          |
| ●            | ●         | Waukesha County  | 1/28/2004   | ↓        |          |
| ●            | ●         | Wisconsin Counties Association                               | 2/25/2004   | ↓        |          |
| ●            | ●         | Wisconsin Farm Bureau Federation                             | 9/11/2003   | ↔        |          |
| ●            | ●         | Wisconsin Manufacturers & Commerce                           | 10/29/2003  | ↑        |          |
| ●            | ●         | Wisconsin Realtors Association                               | 10/13/2003  | ↑        |          |

Select a legislative proposal and click "go"

**House**

**Proposal Type**

**Proposal Number**  (enter proposal number)

**Legislative Session**