

Appeal of the Approval of Conditional Use Permit #2509 by the Zoning  
& Land Regulation Committee on May 11, 2021

**Additional Argument**  
**August 29, 2021**

Appellants: Brett Daggett, Jeremy Knudson, Doug Nelson  
Agent: Tom Mathies

The appellants ask the Board of Adjustment to consider an additional argument in support of Claim 1.

**Claim 1. The ZLR Committee reconsidered an approved CUP without authority to take this action.**

D. The ZLR Committee may not approve a conditional use application that was not complete at the time of notice is first given for the final public hearing.

From the Wisconsin Supreme Court opinion in *Weber v. Town of Saukville* [9]:

¶ 43 Initially, we conclude that unless a zoning ordinance provides to the contrary, a court should measure the sufficiency of a conditional use application at the time that notice of the final public hearing is first given. Such a rule ensures that interested individuals will have a meaningful opportunity to express informed opinions at the public hearings. Indeed, a contrary rule would create a damaging incentive for a conditional use permit seeker to withhold all controversial information from its application until during or after the public hearing. Such a perverse incentive would be diminished only slightly by requiring a complete application at the time of the public hearing, for even our ablest citizens would be hard pressed to digest and discuss in a single public hearing all of the debatable proposals in a given conditional use application. Requiring a complete application at the time that the last public hearing is noticed places no significant burden on conditional use applicants, and provides ample opportunity for interested citizens to inform themselves in preparation for the hearing.

Footnote 12 of the Court's opinion underscores the importance of the public hearing:

12. We reject Payne & Dolan's view that the information contained in a conditional use permit application is important only to the Town Plan

Commission and Board, and may therefore be provided at any time prior to the issuance of the permit. We cannot accept such a view because we do not believe that the ordinance anticipates a public hearing at which citizens participate as mere passive spectators. If such were the case, there would be no need for public hearings.

Finally:

¶ 47 We have determined that an application must be complete at the time that notice is given of the last public hearing, unless an ordinance expressly permits a later submission of information. Here, the conditional use application was incomplete because it did not contain information regarding the quantity of water to be used in the quarrying operation or the proposed depth of the quarry. There being no ordinance provision authorizing subsequent submission of either type of information, we conclude that the application was insufficient.

The only public hearing for CUP #2509 was held on January 26, 2021. At this hearing the appellants did not have an opportunity to offer informed opinions on potential impacts of the westerly driveway because this driveway is not shown in the conditional use application.

The Zoning Ordinance requires that conditional use applications be complete at the time of filing, § 10.101(7)(b):

Application Requirements. An application for a conditional use shall be filed with the zoning administrator on a form prescribed by the zoning administrator. Only complete applications will be accepted. The application shall be accompanied by such plans and other information as required by this section, by requirements for particular uses or as prescribed by the zoning administrator, and shall include, at a minimum, the following:

...

3. Site plan. All applications for a conditional use permit must be accompanied by a site plan, meeting all the standards described in s. 10.101(6).

The site plan requirements of § 10.101(6) include:

9. Location and width of all existing and proposed driveway entrances onto public and private roadways, and of all interior roads or driveways. Traffic flow patterns must be indicated.

No provision of the Zoning Code allows conditional use application information to be submitted subsequent to initial notice of the public hearing. The public hearing must be held after receipt of a complete application, § 10.101(7)c1.a:

Upon receipt of a complete and acceptable application, statement, site plan and operational plan, the zoning committee shall hold a public hearing on each application for conditional use.

Suggested finding of fact:

1. At the time notice was given for the public hearing the application for CUP #2509 did not include the more westerly driveway.

Suggested conclusions of law:

1. The application for CUP #2509 was incomplete at the time notice was given for the public hearing.
2. The incomplete application denied the appellants the opportunity to prepare themselves for the public hearing.
3. The Zoning Ordinance does not allow submission of application information after notice is given for the public hearing therefore the application was insufficient.
4. The May 11 approval of CUP #2509 was invalid.

Proposed relief:

The Board reverses the May 11 approval of CUP #2509.

## **Reference**

9. *Weber v. Town of Saukville*

<https://caselaw.findlaw.com/wi-supreme-court/1112877.html>