

Plan Commission  
Special Meeting of July 11, 2024  
Agenda #3, Legistar #84294

Page 8 says CU "decisions must be based on "Substantial Evidence" and not "Personal Preference."" The Plan Commission and residents should all have a full understanding of what is meant by substantial evidence.

- For example, in an unpublished decision, *Scenic Ridge v. Village of Vernon*, the court said in footnote #10 that "[S]ubstantial evidence is less than a preponderance of the evidence, [but] it is `more than a mere scintilla of evidence and more than conjecture and speculation.'"
- *In Stop the Ongoing Mine Permit v. Town of Ashford*, 2019 WI App 39, ¶12, the court said: "Based on the legislature's use of that term in conjunction with the phrase "other than," we believe it did not intend to prohibit the use of personal preference, speculation, or personal knowledge completely; it meant to curb the use of that information as the only support for the conditional use permit."
- It is also important to note that the applicant must provide substantial evidence that it satisfies the requirements and conditions established by City. Occasionally this is done (e.g., a proposal for a tall building will show there are other tall buildings nearby), but for the most part applicants make conclusionary statements without offering substantial evidence.
- In 2018 the City Attorney's office provided an analysis of 2017 WI Act 67, the law that added "substantial evidence." It was, as usual, marked confidential. But residents should know how the City has chosen to apply this Act.
- The City has not reevaluated conditional uses since the passage of 2017 WI Act 67. Below is a link to a legal analysis provided to the Village of Elm Grove, one which suggested reviewing conditional uses in light of Act 67. This may be a valuable analysis for Madison to perform – for example, is a 106 unit building ever appropriate in an area where only 8 units are a permitted use?

<https://elmgroviewi.org/AgendaCenter/ViewFile/Item/6783?fileID=7251>

Respectfully Submitted,  
Linda Lehnertz