



# DANE COUNTY PLANNING & DEVELOPMENT

## Town and County Government Under County Zoning

FEBRUARY 11, 2021

NUMBER 4

# P L A N N I N G N O T E S

### Background

When it comes to zoning and land use, the relationship between town and county governments in Dane County is defined through three distinct sets of policies, laws and regulations:

#### State Statute

In Dane County, all towns have chosen to adopt the county's zoning ordinance ([Chapter 10, Dane County Code](#)), which, in turn, is adopted under [Section 59.69 of the Wisconsin Statutes](#). This section of law provides for a shared-power system between town and county government. Both the town and county boards must agree on any zoning change. However, the ability of each level of government to use the checks and balances built into the law depends on strict adherence to statutory timeframes and requirements.

#### What's in this Issue?

- Consistency with Town Plans
- ZLR Committee Policies and Procedures
- Analysis & Recommendations

### County zoning ordinance and the Dane County Farmland Preservation Plan

#### 1. Conditional zoning

Section 10.255(3) of the County Zoning Ordinance allows the county board to adopt conditions or restrictions on zoning petitions in order to deal with unique circumstances of particular sites, or with types of uses that are unusual in the county. This section also provides for enforcement of such conditions through restrictive covenants, and allows the county to delay the effective date of zoning approvals until conditions are satisfied.

When a town proposes conditions on a zoning petition, it is technically not imposing such conditions itself, but is asking the county to use its authority under Section 10.255(3) to impose them on the town's behalf. If the county board does amend the petition to impose conditions, whether by the request of the town or on its own initiative, the petition will automatically be re-referred to the town for final approval.

#### 2. Consistency with town/county plans

Section 10.255(1)(d) of the County Zoning Ordinance requires the Zoning and Land Regulation Committee to use plans developed by towns and approved by the county board as criteria for zoning recommendations. In practice, the county and towns have used the [Dane County Farmland Preservation Plan](#), which includes town plans adopted by the county board, as the guiding plan to

implement this requirement. Presumably, however, other plans (such as comprehensive plans) could also serve this purpose, provided both the town and county boards adopted them.

This provision is probably the strongest avenue for town influence over county zoning decisions. The Department of Planning & Development routinely evaluates all zoning petitions and conditional use permit applications against the policies described in the town/county plans.

### **Rules and Procedures of the Zoning and Land Regulations Committee**

In order to facilitate town input, the county [Zoning and Land Regulations Committee](#) has adopted a policy that it will not take action on zoning petitions until it has received a written recommendation from the Town Board, even if the town's statutory timeline for disapproval has passed. The ZLR has traditionally given the town's recommendation great weight. However, this policy does not have the force of law, and cannot by itself guarantee that a town will be able to exercise its legal disapproval rights under state statute.

## **Analysis & Recommendations**

### **Review Period from Public Hearing**

All towns in Dane County have already filed a resolution with the County Clerk requesting 20-day extensions to review rezone petitions after the public hearing, as allowed under Section 59.69(5)(e)3m, Wis. Stats. This means that Dane County towns have a total of 30 days after the ZLR public hearing to decide whether or not to disapprove future zoning petitions. Only one such resolution is necessary. Such resolutions serve as a blanket extension that applies to all petitions from that point forward, unless the town specifically rescinds it.

### **Town Disapproval of County Rezone Petition**

A town will always have the greatest influence over the county zoning process if it passes a resolution disapproving a zoning petition within 30 days of the ZLR public hearing. When a town has disapproved a zoning petition within this timeframe, the county board must either amend the petition or deny it; the county board no longer has the legal option to approve the petition as submitted. Any zoning petition amended by the county board is automatically forwarded to the town board for a second, final review. The town board then has 40 days from the date of enactment of the amended petition to approve as amended or disapprove. If the town board takes no action, the amended petition goes into effect at the end of the 40-day period.

### **Town Conditions**

If a town wants to make the strongest possible case for conditions on a particular zoning petition, it could adopt a resolution that does two things:

1. Disapprove the petition as submitted, but;
2. Indicate that the town would support an amended petition that included specific conditions or changes.

A certified copy of such a resolution must be filed with the County Clerk and a copy provided to the ZLR instead of, or in addition to, the Town Action Report (preferably before the ZLR public hearing). This option makes the town's intention as clear as possible to landowners and decision makers, while fully protecting the town's legal rights.

### **Informal Town Recommendations**

In most cases, the county will complete action on non-controversial petitions within 30 days of the public hearing, so an informal recommendation from the town will usually suffice. However, for complicated or controversial petitions, the ZLR and the county board may take more than 30 days from the public hearing to complete their review and deliberation. In this case, the town could wait until shortly after the county public hearing to decide

whether or not to adopt a formal resolution of disapproval as described above.

## **Statutory Deadlines**

In any event, the town should always keep in mind the legal deadlines. Once 30 days from the county public hearing have passed, the town completely loses its legal ability to disapprove an original, as submitted, zoning petition. As noted earlier, the ZLR has made a firm commitment not to act until a town has made its recommendation, even if the statutory timeframe has elapsed. This policy ensures that towns will at least have an opportunity to comment on, if not formally disapprove, a particular petition. If more time is needed, and the town wishes to retain its full legal rights, it's in the town's best interest to disapprove, or to persuade the applicant to withdraw the petition.

## **Working With Landowners**

The complexities of the state zoning law highlight the importance of towns working closely with landowners to resolve potential issues as early in the process as possible. Ideally, these issues should be addressed before an application is even made with the county.

If a landowner has talked to the town board ahead of time, he or she can submit an application that includes appropriate conditions, deed restrictions, or other requirements to meet town needs. This speeds the entire process, since the town can allow the application to move forward as submitted. If a town is satisfied with a petition as described in the county application, it should adopt a resolution of approval as early in the process as possible. Since the application as submitted already includes all town conditions, any changes approved by the county (including deletion of conditions as submitted) would result in re-referral to the town which would then have a second (and final) opportunity to disapprove.

### **Planning Notes**

CCB Room 116 -- 210 MLK Jr. Blvd -- Madison, WI 53703

Phone 266-4266 -- Fax 267-1540

E-mail [plandev@countyofdane.com](mailto:plandev@countyofdane.com)

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