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# CONDITIONAL USE PERMITS ("CUPS")

March 2023

Dane County Planning & Development Department

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# Conditional Use Permits

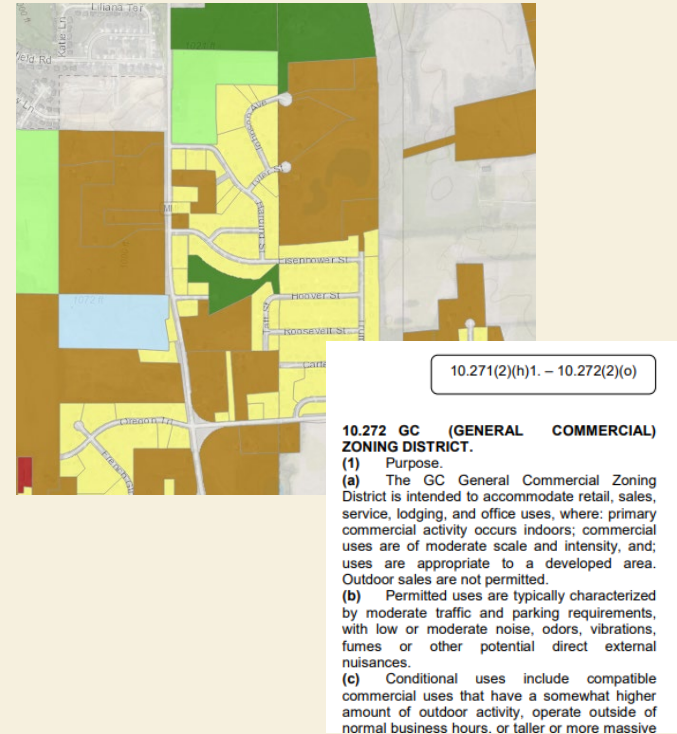
- Overview: CUPs as a zoning tool
  - Examples
  - Rezones vs CUPs
  - General Tips
- Deeper Dive: CUP Application & Review Process
  - Timeline, Roles and Responsibilities
  - Ordinance & Statutory Requirements
- Tips for Smoother Process & Decision Making
  - Conversations and Applications
  - Public Hearings
  - Decision Making
  - Conditions of Approval

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# OVERVIEW: CUPS AS A ZONING TOOL

# What is a CUP?

- A zoning tool.
- Zoning Ordinance = a local regulation that governs the use of land with:
  - Zoning Map – every parcel is assigned a zoning district
  - Ordinance Text – describes the purpose of the district, sets dimensional standards for buildings, parking, etc.
- Zoning District: Each district has “permitted” and “conditional uses,” deemed compatible with the purpose of the district.
  - Permitted uses: Presumed compatible with district’s purpose, only require a zoning permit
  - Conditional uses: *Generally* presumed compatible, but have potential impacts, need additional review by Town and County ZLR Committee



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# Examples of Common CUPs

- Quarries
- Communication Towers
- Dog Kennels
- Short-Term Rentals (Transient/  
Tourist Lodging e.g. Airbnb)
- Limited Family Businesses
- Asphalt Plants/Ready-Mix  
Concrete Batch Plants
- Small-Scale Electric Generating  
Plants
- Schools & Daycares



***Dane County processes 35-40 applications per year for an average of 1 or 2 per Town.***

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# Rezones and CUPs are Different

## REZONES

- Rezones are ordinance amendments/ “legislative” decisions
- Discretionary using Town policies
- Informal consultations OK
- Town formal hearing not required
- Town makes recommendation to County Board

***Zoning opens the door for all sorts of land uses!***

## CONDITIONAL USE PERMITS

- CUPs are “quasi-judicial” – formal decision to fine-tune the zoning
- Decisions must be based on “substantial evidence”
- Informal consultations NOT OK – All discussions must take place in a public meeting
- Town formal public hearing is required
- Town makes decision on CUP

***CUP is a tool to “fine tune” the zoning to ensure fit in the neighborhood.***

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# Tip: Separate Rezone and CUP Applications

- Best not to act on rezones and CUPs at the same time:
  - Limits the Town's decision-making ability
  - Combined decisions are harder to defend
- If the land uses listed for the zoning district are not well-suited for the area, do not rezone the property.
- A Town's discretion is limited on a CUP review (per State Statutes), once the zoning is in place.
- If a proposal requires both a rezone and CUP, denying the rezone makes the CUP application moot.

*Reviewing and acting on them separately helps avoid confusion, and makes the decisions more defensible.*

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# Tip: Use a Formal CUP Process

- It is recommended the Plan Commission and Town Board hold joint public hearing (if both are acting on CUP)
  - Public Hearing Notice must state that both bodies will be present
  - Villages and Cities only have the Plan Commission act on CUPs
- Set rules for submitting written information/evidence
  - What will be accepted into the record? Deadline?
- Set rules for conducting public hearings
  - Order of speakers (applicant first, those in support, those opposed, rebuttal by applicant)
  - Time limits for speakers (Ex: 3-5 minutes each)
  - All comments should be addressed to Town Officials – no arguments between parties
- Postpone controversial petitions to allow time for deliberation
- Keep a folder for all CUP-related documents in case the decision goes to court

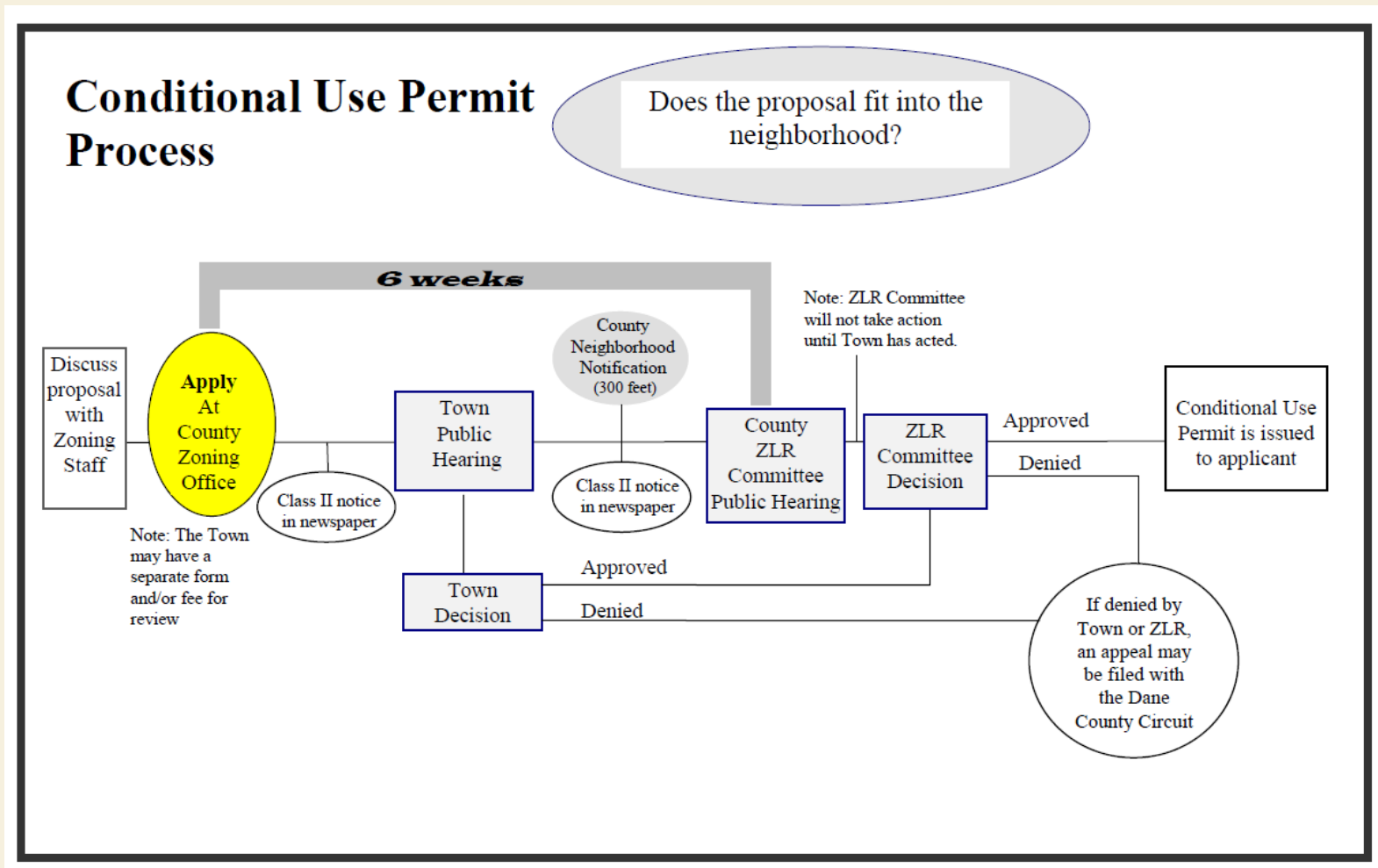
*The CUP procedure should be written down, formally adopted, and consistently followed.*



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# DEEPER DIVE: CUP APPLICATION & REVIEW PROCESS

# CUP Application Review Process



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# CUP Application Review Process

- Pre-Application consultations with Town and County staff
- Formal application with Dane County
  - Applicant responsible for demonstrating how standards will be met
- Class 2 Public Notice
- Town & County Cooperation/Joint Action (unique)
  - Town CUP veto authority – if Town denies, CUP is dead.
- Town Action
  - Town has 60 days from Public Hearing to act, w/ 40-day extension.
  - Findings of fact, are CUP standards met?
- Public Hearing @ ZLR Committee (with Class 2 Notice)
- ZLR Action
  - If Town approved, and no concerns remain
  - Findings of fact, are CUP standards met?
  - ZLR Committee Action = final action on the CUP
- Decisions can be appealed to Circuit Court

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# County Zoning Ordinance

- S. 10.101(7)(a): *“The development and execution of this ordinance is based upon the division of the county into districts, within which districts the use of land and buildings, and bulk and location of buildings and structures in relation to the land are mutually compatible and substantially uniform. **Certain uses, because of their unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review. With appropriate limitations on siting, development and operation, such uses may be compatible with other uses in a particular zoning district. Such uses are classified as conditional uses and are subject to the following provisions.**”*

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# County Zoning Ordinance

- Application Requirements:
  - Statement addressing the 8 CUP standards
  - Legal Description of property involved
  - Site Plan – with information required per s. 10.101(6)
  - Operational Plan / Narrative
  - Neighborhood map with existing zoning and land uses (context)
  - Building plans (interior & exterior)
  - *Zoning Administrator may require additional information*
- Town Board and Zoning Committee shall make “findings of fact based on evidence presented”
- Proposal must meet the eight (8) CUP standards
- Zoning ordinance has set conditions for all CUPs and select ones for specific uses to help mitigate nuisances.



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# County Zoning Ordinance: CUP Standards

## **General standards for approval of a conditional use under s. 10.101(7)(d):**

1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare;
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use;
3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
6. That the conditional use shall conform to all applicable regulations of the district in which it is located.
7. That the conditional use is consistent with the adopted town and county comprehensive plans.
8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).

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# County Zoning Ordinance: CUP Standards (cont'd)

## **Additional standards in Farmland Preservation Districts:**

1. The proposed use is consistent with the purpose of the district.
2. The proposed use is reasonable and appropriate with alternative locations considered, or are specifically approved under state or federal law.
3. The proposed use is reasonably designed to minimize the conversion of agricultural lands.
4. The proposed use does not substantially impair the current or future agricultural use of surrounding parcels that are zoned for or restricted to agricultural use.
5. Construction damage to remaining lands in agricultural use is minimized and/or repaired.

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# State Statutes

- Before 2017, CUPs were not addressed in state statutes; governed by case law
- *AllEnergy Corp. v. Trempealeau County, 2017 WI 52*
  - *County denied permit based on public concerns. Court supported denial. Dissenting opinion argued for less discretion. Case established “substantial evidence” as the appropriate standard for CUP decisions.*
- 2017 Wisconsin Act 67 modified state law
- Wisconsin State Statutes, [s. 59.69\(5e\)](#):
  - “Conditional use” defined
  - “Substantial evidence” defined
  - Public hearing with Class 2 notice
  - If applicant agrees to conditions, CUP shall be granted
  - Conditions must be reasonable and measurable to a common person
  - ***Decisions and conditions must be based on evidence***



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# “Substantial Evidence”

- Definition: “. . . facts and information, *other than merely personal preferences or speculation*, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that *reasonable persons* must accept in support of a conclusion.”
- Burden of proof is primarily on applicant: Applicant must demonstrate that conditions established will be satisfied, supported by substantial evidence.
- Decisions cannot be based on hearsay, speculation, emotion. Any condition imposed must be based on substantial evidence.
- Decisions to approve or deny must be supported by substantial evidence.
- There may be contradictory substantial evidence.

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# “Substantial Evidence” Examples

- Drainage / storm water issues
  - Is there analysis from a Professional Engineer or other knowledgeable expert?
- Wetland impacts
  - Is there a wetland delineation? Has applicant addressed compliance with wetland regulations such as building setbacks?
- Impacts to property values
  - Is there evidence such as comparable sites, appraisal impact study?
- Concerns with traffic
  - Have they provided information on how much traffic will be generated? Traffic flow and turn movements? Existing road conditions? Etc.
- The proposal is ugly / unsightly
  - Subjective – unsightly to whom? Can it be alleviated by screening or changes to the proposal? Were visual images provided to show the impact or lack of?

***Evidence either for/against must provide reasonable facts and information related to the conditions of the permit.***

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# TIPS FOR SMOOTHER PROCESS & DECISION MAKING

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# Tips: Public Notice and Hearing

- Public Hearing posted twice (Class 2)—minimum 2 weeks in advance, and one week prior to hearing in either:
  - 3 public locations OR
  - 1 public location and on the town website
  - Locations should be pre-determined by Town Board and referenced in adopted procedures
- Use a separate notice (other than the agenda)
- The notice includes: meeting location, date, time, name of property owner / applicant, address, CUP description, and proposed project
- As part of the Dane County process for the County's public hearing, mailings go out to landowners within 300 feet (minimum)
- Town procedures for public hearings vary

## TOWN OF DANE NOTICE OF PUBLIC HEARING

**Fill in Date– 6:30 P.M.**

Notice is hereby given that a public hearing will be held before the Town of Dane Board commencing at 6:30 p.m. on **Fill in date**, in the Town of Dane MUNICIPAL BUILDING, 213 W Main Street, Dane, WI 53529 regarding the following proposal. All persons will be afforded the right to speak upon the proposal.

### **Conditional Use Permit**

PETITION: CUP 02584

APPLICANT: JOSEPH AND DIANE RIPP

LOCATION: SOUTH OF 7839 BONETTI ROAD, SECTION 1, TOWN OF DANE

CUP DESCRIPTION: non-metallic mineral extraction operation, temporary concrete batch plant, and temporary asphalt plant

Rules regarding public hearing:

1. Oral testimony will be taken at the public hearing. Speakers shall have 5 minutes to comment on the matter.
2. Any persons wishing to submit written testimony shall do so by submitting 4 copies on letter size paper to the Town Clerk during normal business hours or at the public hearing.
3. Emails, faxes, texts, or other format sent to the Town WILL NOT be accepted as part of the public record.

Additional information can be found at the Dane County's Legislative Information Center website: <https://dane.legistar.com/legislation.aspx>

Angie Volkman-Town of Dane Clerk

Posted: **fill in date at least two weeks prior to public hearing**

Town Hall, Town Website ([www.townofdane.org](http://www.townofdane.org)) Post Office and Dane Lumber

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# Tips: Rules for Public Hearings

- Establish a plan and stick to the plan
  - Inform the public of the procedures for the providing testimony
    - Written format
      - Are emails, photos, movies, recordings, letters acceptable?
      - Who does the written testimony need to be sent to?
      - When is the information due by?
      - When will written testimony part be closed?
    - Oral testimony
      - Order of speakers
      - Time limit for speakers
      - All concerns must be directed to the committee
      - When is the public testimony closed?
- Postpone controversial petitions to allow time for deliberation
- Keep a folder for all CUP-related documents in case the decision goes to court

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# CUPs and Comprehensive Plans

- Consistency with the town comp plan is not required under state law
- However, local governments *may* apply comprehensive plan policies to CUP decisions. (Dane County Ch. 10 does require this as a CUP standard.)

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# Decisions: Weighing the Evidence

- A municipality's discretion is limited under a CUP review – Quasi-judicial process.
- Identify key issues using: the application, applicant statements, input from other agencies, staff report, comments at the public hearing, etc.
- Decision makers and staff must identify the legitimate concerns, applying principal of “substantial evidence” (one of the primary reasons for Act 67).
- Controversial applications should be postponed to provide time to summarize concerns and see if the concerns can be mitigated.
- County staff can assist in preparing conditions or determining if the request meets the standards.



# Conditional Use Permit Worksheet

CUP # \_\_\_\_\_

## Standards and Concerns

1. The proposal will not be detrimental to public health, safety, comfort, and general welfare.
2. Neighboring properties will not be substantially impaired or impacted.
3. The proposal will not interfere with the orderly development of the surrounding area.
4. The proposal has demonstrated that necessary site improvements will be provided.
5. The proposal has demonstrated that adequate road access and traffic control will be provided.
6. The proposal meets other Town, County, and State requirements.
7. The proposal meets the development policies found in the Town Comprehensive Plan.
8. The proposal meets the standards of the Farmland Preservation Program, if applicable.

Is the proposal compatible with the neighborhood?

Hours of Operation	Number of Employees	Number of Patrons	Outdoor activities
Building size	Building location	Employee parking	Patron/event parking
Driveway design	Traffic flow	Road design	Storm water management
Outdoor Storage	Exterior lighting	Noise/loudspeakers	Odors
Sanitary facilities	Water supply	Hazardous materials	Trash control
Landscaping	Screening for neighbors	Expiration date needed	



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# Decisions: Conditions of Approval

- County Zoning Code sets minimum CUP conditions:
  - s. 10.101(7) (d) Requirements all CUPs
  - s. 10.103 Special Requirements for Particular Uses (e.g. animal boarding, communication towers, mineral extraction)
- Additional conditions allowed, as needed:
  - Town board and zoning committee may impose any other conditions as necessary to meet the standards for CUP approval.
  - Examples: expiration dates, hours of operation, number of events/people/vehicles, limits on building size or acreage, requirements for screening/berms/minimum setbacks, etc.

***Base the conditions on legitimate concerns and substantial evidence.  
Focus on what conditions to impose to mitigate the negative impacts.***

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# Decisions: Conditions of Approval

- “Good” conditions of approval:
  - Is it based on the substantial evidence presented?
  - Is it necessary to mitigate a legitimate, substantiated concern?
  - Is it necessary to meet the ordinance standards?
  - Is it enforceable?
  - Can the land use fit into the neighborhood?
- Using the Town Comprehensive Plan policies
  - Town plan policies are not required to be followed per Wis. Stats.
  - County’s zoning ordinance does require Town plan policies to be used.

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# Recap

- Rezones and CUPs are different – rezones open the door to various land uses, CUPs “fine-tune” the zoning.
- Separate the review of Rezones and CUP petitions.
- We recommend having a formal procedure for CUPs that is: written down, formally adopted, consistently followed.
- Process: Obtain all the testimony; identify concerns; see if concerns can be addressed; render decision based on facts. Choice: approve – deny – or take no action

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# Thank you!

**Dane County Planning & Development**

**Website: [www.danecountyplanning.com](http://www.danecountyplanning.com)**

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