

# CONDITIONAL USE PERMITS (CUPS)

*October 11, 2018  
Town of Verona Hall  
7669 County Highway PD, Verona, WI 53593  
7:00 to 9:00 p.m.*

*Sponsored Jointly by the Dane County Planning & Development Department  
and the  
Dane County Towns Association (DCTA)*

# ZONING

- ◆ An ordinance (local regulation) governing the use of land.
  - 1) text, and
  - 2) a map
- ◆ First zoning ordinance adopted in Dane County in 1938.
- ◆ Every parcel in Dane County has a designated zoning district (map).
- ◆ Every zoning district has “permitted” and “conditional uses,” deemed compatible with the purpose of the respective district (text).

# PERMITTED USES

- ◆ Listed and allowed in a zoning district 'by right' within that respective zoning district.
- ◆ Presumed consistent and not inherently in conflict with the designated purpose of the zoning district.
  - For example, a residence in a residential district.
- ◆ Allowed administratively by way of a zoning permit.

# CONDITIONAL USES

- ◆ Listed and *conditionally* allowed in a zoning district, subject to formal decision making by Dane County Zoning and Land Regulation Committee (ZLR) and Town.
- ◆ *Generally* presumed consistent with zoning district, but potential for secondary impacts; approval of CUP includes conditions.
  - For example, a bed & breakfast in a residential area.
- ◆ Allowed by way of a conditional use permit (CUP).

(K) Spacing between mobile homes and accessory buildings shall be in accordance with Wis. Admin. Code ILHR 21.08(5), but in no case shall be less than five (5) feet.

(L) Spacing between mobile homes as set forth in paragraph (c) shall be exclusive of decks, cabanas and accessory buildings including sheds.

(m) Mobile homes may be removed and replaced in a mobile home park provided that replacement is in compliance with the regulations of this subsection applicable to the park.

[History: (6), (7) and (8) am., OA 30, 1991-92, pub. 04/22/92; (2)(c) and (10)(l) am., OA 16, 1996-97, pub. 01/16/97; (10)(a), (c) and (e) am. and (10)(k), (L) and (m) cr., OA 19, 1997-98, pub. 05/30/98, eff. 05/31/98.; (10)(e) am., OA 39, 1997-98, pub. 08/17/98; (10)(f) am., OA 3, 2000-01, pub. 10/19/00; (10)(e) am. and (cm) cr., OA 30, 2000-2001, pub. 08/21/01.]

(7) Side yard requirements. (a) For residential buildings there shall be a total of 25 feet of side yards and no single side yard shall be less than 10 feet.

(b) Accessory buildings for the housing of livestock shall be located not less than 50 feet from any side lot line.

(c) Other accessory buildings shall be located not less than 10 feet from any side lot line.

(8) Rear yard requirements. (a) For residential buildings, the minimum rear yards shall be not less than 50 feet.

(b) Accessory buildings for the housing of livestock shall be located not less than 50 feet from any rear lot line.

(c) Other accessory buildings shall be located not less than 10 feet from any rear lot line.

(9) Off-street parking. Off-street parking shall be provided as required in section 10.18.

[History: (2)(f) cr., OA 2, 1995-96, eff. 09/12/95; (2)(g) cr., OA 16, 1997-98, pub. 03/03/98; (9) cr., OA 39, 1997-98, pub. 08/17/98.]

#### 10.091 RH-2 RURAL HOMES DISTRICT. (1)

Permitted uses. All uses permitted in the RH-1 Rural Homes District.

(2) Conditional uses. All conditional uses permitted in the RH-1 Rural Homes District.

(3) Building height limit. Shall be the same as the RH-1 Rural Homes District.

(4) Lot width and area. The minimum lot width shall be 150 feet to be measured at the front building line of a residence, also at the location of any accessory building for the housing of livestock. The minimum lot area shall be not less than 4 acres.

(5) Lot coverage, setback, side yard and rear yard requirements shall be the same as for the RH-1 Rural Homes District.

(6) Off-street parking. Off-street parking shall be provided as required in section 10.18.

[History: (6) cr., OA 39, 1997-98, pub. 08/17/98.]

#### 10.092 RH-3 RURAL HOMES DISTRICT. (1)

Permitted uses. All uses permitted in the RH-1 Rural Homes District.

(2) Conditional uses. All conditional uses permitted in the RH-1 Rural Homes District.

(3) Building height limit. Shall be the same as the RH-1 Rural Homes District.

(4) Lot width and area. The minimum lot width shall be 150 feet to be measured at the front building line of a residence, also at the location of any accessory building for the housing of livestock. The minimum lot area shall be not less than 8 acres.



#### 10.09 RH-1 RURAL HOMES DISTRICT. (1)

Permitted uses. (a) All uses permitted in the R-1 Residence District.

(b) Agricultural uses, the number of livestock kept on a zoning lot in the RH-1 District shall not exceed one animal unit for each full acre.

(c) Home occupations, as defined in section 10.01(25).

(d) Utility services.

(e) Uses and buildings, clearly incidental and necessary to a permitted use on the premises.

(2) Conditional uses permitted in the RH-1 Rural Homes District. (a) Day care centers.

(b) Community living arrangements for nine (9) or more persons.

(c) Governmental uses.

(d) Religious uses.

(e) Dependency living arrangements.

(f) Bed & breakfasts.

(g) Schools.

(3) Building height limit. Residential buildings shall not exceed two and one-half (2½) stories or 35 feet.

(4) Lot width and area. The minimum lot width shall be 150 feet to be measured at the front building line of a residence, also at the location of any accessory building for the housing of livestock. The minimum lot area shall be not less than 2 acres.

(5) Lot coverage. No residential building together with its accessory buildings shall cover in excess of 10% of the lot area.

(6) Setback requirements. Setback from front lot line or highway right-of-way lines shall conform to the requirements of section 10.17.

# ZONING ORDINANCE TEXT EXAMPLE

# CONDITIONAL USE EXAMPLES

- ◆ Quarries
- ◆ Communication Towers
- ◆ Dog Kennels
- ◆ Horse Boarding Facilities
- ◆ Governmental Uses
- ◆ Asphalt Plants/Ready-Mix  
Concrete Batch Plants
- ◆ Small-Scale Electric  
Generating Plants
- ◆ Limited Family  
Businesses
- ◆ Schools



# MISC. CUP DATA

- ◆ “Special Uses” not incorporated into ordinance until 1968; first “special use” was ‘mineral extraction.’
- ◆ On average, countywide, between 35 and 40 CUP applications per year (between 2 and 4 per month).
- ◆ Most towns may typically only process 1 or 2 CUPs per year.

# COUNTY ORDINANCES

◆ Section 10.255(2)(a) of the Dane County Code of Ordinances.

“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. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use at a particular location. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses. Such uses are classified as conditional uses and are of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.”

# COUNTY ORDINANCES

- ◆ Section 10.255(2) of the Dane County Code of Ordinances.
  - Application to Dane County:
    - ◆ Site Plan
    - ◆ Operational Plan
    - ◆ Written Statement (including “adequate evidence” that six (6) standards will be satisfied)
  - Public Hearing with Class 2 Public Notice
  - Town & County Cooperation/Joint Action
    - ◆ Dane County OA 54, 2008-2009 (June 2008): Town CUP veto authority.
  - Towns have 60 days from public hearing to act, w/40-day extension.
  - Decisions can be appealed to the Board of Adjustment (and/or Circuit Court, etc.)
  - Zoning committee shall make “findings of fact based on evidence presented”
  - Six (6) Standards

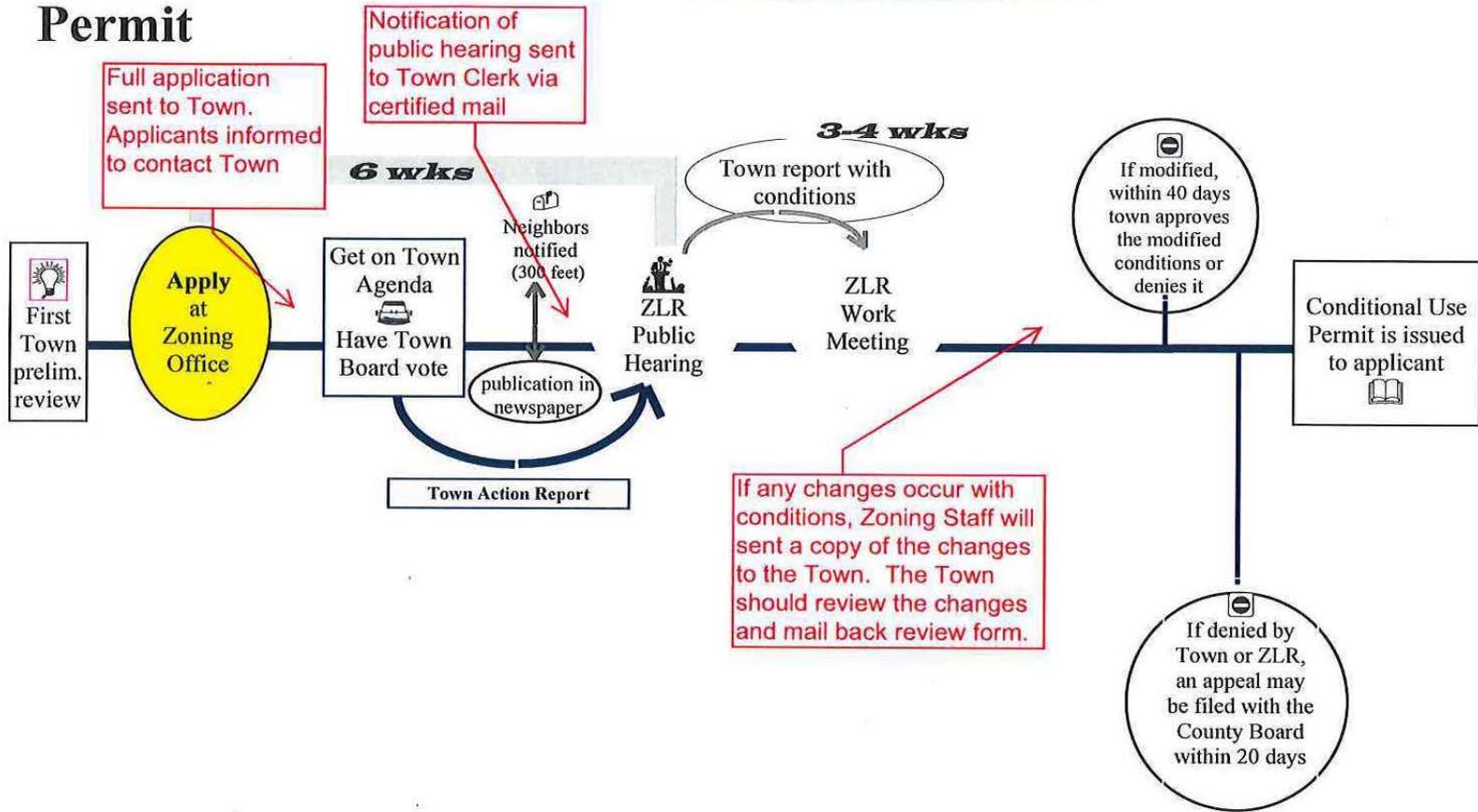
# STANDARDS FOR CUPs

◆ S. 10.255(2)(h) of the DCCO outlines general standards for the granting of CUPs:

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.

# Conditional Use Permit

Does it fit w/ Town Plan?



# STATE STATUTES & “ACT 67”

- ◆ CUPs previously not addressed in statute; governed by case law
- ◆ *AllEnergy Corp. v. Trempealeau County*
- ◆ Wisconsin Act 67, 2017
- ◆ Wisconsin State Statutes, Section 59.69 (5e):
  - “Conditional use” defined
  - “Substantial evidence” defined
  - Public hearing with a Class 2 notice
  - If applicant agrees to conditions, CUP *shall* be granted
  - Conditions must be reasonable & measurable (“to extent practicable”)
  - Decisions based on “substantial evidence”

# “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.”

- ◆ Decisions cannot be based on hearsay, speculation, emotion.
- ◆ Any condition imposed must be based on substantial evidence.
- ◆ Burden of proof is primarily on the applicant: Applicant must demonstrate that conditions established will be satisfied, supported by substantial evidence.
- ◆ County/town decisions to approve or deny must be supported by substantial evidence.
- ◆ There may be contradictory substantial evidence.

# ISSUES, CONCERNS, & CONDITIONS

- ◆ Issues are identified by a number of means: application, conversations with applicants, input from other agencies, staff report, neighbors, public hearing, etc.
- ◆ Decision makers and staff must filter legitimate concerns from speculation applying principal of 'substantial evidence' (one of primary reasons for Act 67).
- ◆ Tie requests for substantial evidence to legitimate concerns.
- ◆ Burden of proof is on the applicant.
- ◆ County can assist in requesting and compiling information.
- ◆ Base conditions on legitimate concerns and substantial evidence.
- ◆ Petitioner obligated to adhere to conditions.

# ISSUES, CONCERNS, & CONDITIONS (cont.)

- ◆ The proposed CUP will cause too much traffic!
  - How much traffic? Did the applicant provide information? Is the traffic reasonable? Will the road accommodate the traffic?
- ◆ The proposed CUP will have a significant negative impact on my property values!
  - Reasonable concern? Is there proof? Comparables? Impact from an appraiser? Ask the applicant to perform an appraisal impact study?
- ◆ The proposed CUP is ugly and I don't want to look at the land use.
  - Conjecture and speculation? Is it ugly to a reasonable person? Can the applicant provide screening or alter the proposal? Visual impact simulations?

# IMPACT OF ACT 67: SIGNIFICANT CHANGE?

Some say **NO** (Dane County opinion):

- ◆ Largely enacts existing case law.
- ◆ Encodes what has been the practice in most communities for years.
  - Public Hearing and Class 2 Notice
  - Standards
  - Substantial Evidence
  - Written Findings of Fact
  - Reasonable Conditions

# IMPACT OF ACT 67: SIGNIFICANT CHANGE?

Some say YES:

- ◆ Requirements may be onerous for smaller local jurisdictions.
- ◆ Local jurisdictions may no longer be able to deny a CUP if officials deem it to be a bad fit for a proposed site, inconsistent with the adopted plan, or burdensome on neighbors.
- ◆ One possible approach: Jurisdictions could consider having fewer conditional uses in their ordinances, instead identifying them as permitted uses in a broader range of more narrowly defined zoning districts.

# COMPREHENSIVE REVISION OF THE DANE COUNTY ZONING ORDINANCE

- ◆ Standard conditions apply to all CUPs.
  - Must conform to site and operational plans
  - New buildings must meet building code
  - Copies of any other licenses or permits must be provided to zoning administrator
  - Septic systems must be inspected and brought up to code
  - Access only as designated on site plan
  - Adequate off-street parking must be provided
  - Landowner must pay for county highway and town road improvements necessary to accommodate increased traffic
  - Zoning staff may access site as necessary to inspect for compliance
  - Landowner must post placard with CUP number and Zoning contact info
  - Landowner must keep complete CUP on site, available for inspection by public on request
  - Failure to comply with any conditions may result in revocation

# COMPREHENSIVE REVISION & CUPs (cont.)

## ◆ Special conditions for particular uses.

- [Accessory dwelling units](#) (a.k.a. "granny flats," "dependency living arrangements," "tiny houses.") (see [definition](#))
- [Adult entertainment](#) (see [definition](#)) and [adult bookstores](#) (see [definition](#))
- [Agricultural entertainment and special events](#) (see [definition](#))
- [Airports, airstrips and heliports](#) (see [definition](#))
- [Animal boarding \(domestic pets\)](#) (i.e. "pet day-care," kennels) (see [definition](#))
- [Animal boarding \(large animal\)](#) (i.e., stables, etc.) (see [definition](#))
- [Campgrounds](#) (see [definition](#))
- [Communication towers](#) (see [definition](#))
- [Farm residences](#) (see [definition](#))
- [Limited family business](#) (see [definition](#))
- [Limited farm business](#) (a.k.a. "limited rural business") (see [definition](#))
- [Mineral extraction](#) (see [definition](#) ; see also [Mineral Extraction Accessory Uses](#))
- [Outdoor assembly events](#) (i.e., fairs, festivals, outdoor weddings, etc.) (see [definition](#))
- [Renewable energy systems](#) (see [definition](#) ; see also [Utility Services](#))
- [Salvage yards and junkyards](#) (see [definition](#))
- [Transient and tourist lodging](#) (i.e., bed & breakfast, cabin rentals) (see [definition](#))
- [Temporary batch concrete and asphalt production](#) (see [definition](#))

# COMPREHENSIVE REVISION & CUPs (cont.)

- ◆ Suggested conditions to apply as needed.
  - Expiration dates (*except cellular towers – prohibited by statute*)
  - Hours or days of operation, number of events each year.
  - Number of employees.
  - Total people, vehicles or animals on the premises at any one time.
  - Quantity or volume of product on the premises at any one time.
  - Square footage of buildings or outdoor areas devoted to the proposed use.
  - Screening, berms or minimum setbacks.
  - Noise limits (guidance and dB limits in code)
  - Controls, limits or setbacks to control odor or fumes.
  - Surety bonds to dismantle hazards after CUP expires, is abandoned or revoked. (*consistent with state statute*)

# CUPs & COMPREHENSIVE PLANS

- ◆ Issue of CUPs and comp plan consistency isn't cut and dried. Dane County is still refining its thoughts in this regard.
- ◆ Wisconsin State Statutes, Section 66.1001(2m)(b): "A conditional use permit that may be issued by a political subdivision does not need to be consistent with the political subdivision's comprehensive plan."
- ◆ Local governments *may* apply comprehensive plan policies to CUP decisions.
- ◆ S. 10.255(1)(d), D.C. Ords.: "The zoning committee shall use plans and maps developed by individual towns and approved by the county board as criteria for zoning recommendations to the county board, and shall review rezone and conditional use permit applications for consistency with town and county comprehensive plans."
- ◆ Conditional uses already exist in the subject zoning district: There is a presumption of compatibility, subject to addressing standards and ameliorating secondary impacts. Decisions rely more on a quasi-judicial process of meeting ordinance standards, addressing secondary impacts using appropriate conditions, rooted in 'substantial evidence.'

# FACTORS FOR TOWN CONSIDERATION

- ◆ Towns typically have *both* plan commission *and* town board acting on CUPs:
  - Should only one town decision making body act on CUPs, e.g. either plan commission, or town board? County code refers specifically to the board.
- ◆ Some towns do not take action on petitions until after the ZLR public hearing:
  - PRO: Could satisfy town public hearing obligation.
  - CON: Takes more time; can add weeks to length of process.
  - If town defers to county public hearing, local officials should attend the meeting to hear testimony.
- ◆ Be clear and unambiguous about proposal on meeting agendas:
  - GOOD (Hypothetical): “Discussion and Possible Action on Conditional Use Permit (CUP) 2675 for a ‘Horse Boarding Facility’ at 2922 Prairie Haven Road in the Town of Big Spring.”
  - BAD (Hypothetical): “Horse Barn Proposal at the Schmidt Farm.”
- ◆ Officials must be objective, not prejudicial, & base decisions on evidence.

# COUNTY STAFF CAN HELP

- ◆ Accept application, including written statement, site plan, & operation plan.
- ◆ Prepare reports on every zoning petition, including CUPs, which are shared with the towns.
- ◆ Help in getting additional information needed from the applicant or other sources in the decision making process (substantial evidence).
- ◆ Provide additional miscellaneous assistance to towns upon request.
- ◆ Provide information on conducting public hearings and doing Class 2 notices.
- ◆ Coordinate on hosting additional training, e.g. UW-Extension training for Board of Adjustment members on being 'quasi-judicial.'
- ◆ Town 'Take no Action' Option.

# COMMENTS/QUESTIONS?

## DANE COUNTY PLANNING & DEVELOPMENT DEPARTMENT

Website: <http://www.countyofdane.com/plandev/>

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## DANE COUNTY TOWNS ASSOCIATION (DCTA)

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