



## OFFICE OF THE CORPORATION COUNSEL

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March 3, 2022

### VIA EMAIL

Supervisor Jerry Bollig  
Chair, Zoning & Land Regulation Committee  
City-County Building  
210 Martin Luther King Jr. Blvd., Rm. 362  
Madison, WI 53703  
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RE: Zoning Petition No. 11788

Dear Supervisor Bollig:

The Zoning Committee requested an opinion on two issues regarding Zoning Petition No. 11788. You first ask whether the business operated by the applicant constructing sheds on the property constitutes an agricultural related use as defined by DCO § 10.004(15). In my opinion it does not. The primary purpose of the proposed use is not “[p]roviding agricultural supplies, agricultural equipment, agricultural inputs or agricultural services directly to farms, including farms in the farmland preservation zoning district.” Second, you have asked what the committee’s options are in light of the town’s recommendation of approval of the petition. That question is directly answered by statute. The town’s recommendation of approval is not binding on the committee. The committee may recommend approval of the petition as submitted, modify or amend the petition and recommend approval, or recommend disapproval.

Although not specifically asked, I think it is important to address the committee’s and the board’s authority. Zoning and amendment of the zoning ordinance is legislative action. *Quinn v. Town of Dodgeville*, 122 Wis. 2d 570, 584, 364 N.W.2d 149 (1985); *Buhler v. Racine County*, 33 Wis. 2d 137, 146, 146 N.W.2d 403 (1966). The question of how a particular property should be zoned lies within the legislative discretion of the county board. *Id.* A zoning authority’s legislative discretion may not be disturbed on judicial review if any “reasonable basis” supports the action. *Schmeling v. Phelps*, 212 Wis. 2d 898, 917, 569 N.W.2d 784 (Ct. App. 1997), citing *Jefferson County v. Timmel*, 261 Wis. 39, 62-63, 51 N.W.2d 518 (1952). The board has broad discretion regarding zoning classifications so long as it promotes the health, safety, morals or general welfare of the community. *McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, ¶ 35, 374 Wis. 2d 487, 893 N.W.2d 12.

You have requested an opinion as to whether the applicant’s proposed use is an “agricultural related use.” As I understand it, the applicants intend to operate their business known as Ironman Buildings on the subject property. On their web site, <https://ironmanbuildings.com> they describe the business as follows:

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Ironman Buildings has revamped its core business into Mini Agricultural and Mini Residential buildings. These quality structures are designed for curb appeal with organization in mind that will exceed your personal needs.

Tired of a cluttered Garage? We make it so you get your garage back!

Tired of having to drive to one of those commercial storage places to get your stuff when you need it? We make it so you don't have to, you can visit your prize possessions right on site!

Whether you need a storage shed, she shed, man shed, green house, chicken coup, children's playhouse, outside office space, outside class room for studying or whatever your extra space needs are? Contact us today for a quote.

From this description, it appears the business constructs small storage sheds that are not necessarily agricultural in nature. Therefore, it does not appear to be consistent with the definition of an agricultural-related use.

The Zoning Ordinance defines "Agricultural-related use" in DCO § 10.004(15) as follows:

**(15) *Agricultural-related use.*** A facility, whether or not located on a farm, that has at least one of the following as a *primary*, and not merely incidental, purpose:

- (a) Providing agricultural supplies, agricultural equipment, agricultural inputs or agricultural services directly to farms, including farms in the farmland preservation zoning district.
- (b) Storing, processing or handling raw agricultural commodities obtained directly from farms, including farms in the farmland preservation zoning district.
- (c) Processing agricultural by-products or wastes received directly from farms, including farms in the farmland preservation zoning district.

(emphasis added)

It does not appear that sub (b) or (c) are relevant. Therefore, the question is whether construction of storage sheds is **primarily** providing agricultural supplies, agricultural equipment, agricultural inputs or agricultural services directly to farms, including farms in the farmland preservation zoning district.

Statutory interpretation begins with the plain language of the statute<sup>1</sup>. If the meaning of the statute is plain the inquiry stops. Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning. Context is important to meaning. Statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or

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<sup>1</sup> In interpreting an ordinance, the rules of statutory construction apply. *Schroeder v. Dane County Bd. of Adjustment*, 228 Wis. 2d 324, 333, 596 N.W.2d 472 (Ct. App. 1999).

closely-related statutes; and reasonably to avoid absurd or unreasonable results. Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶¶ 45-46, 271 Wis. 2d 633, 681 N.W.2d 110.

In order to qualify as an “agricultural related use,” providing agricultural supplies, equipment, inputs or services directly to farms must be the primary and not an incidental use of the property. The term “primary” is defined as “first, principal; chief; leading.” *Black’s Law Dictionary* (5<sup>th</sup> Ed., 1979), p. 1071. Whereas, “incidental use” in zoning is “use of premises which is dependent on or affiliated with principal use of such premises.” *Id.*, at 686. In *Town of Avon v. Oliver*, 2002 WI App 97, ¶ 19, 253 Wis. 2d 647, 644 N.W.2d 260, the Court of Appeals stated:

According to 2 E.C. Yokley, *Zoning Law and Practice* ¶ 8.2 (4<sup>th</sup> Ed. 1978), a use is incidental if the use is not “the primary use of the property,” is “minor in significance,” and has a “reasonable relationship with the primary use.” “Incidental,” in the context of accessory use, means not only that the disputed use is subordinate to or minor in significance compared to the principal use, but also that it has a reasonable relationship to the primary use.” Citing, *Henry v. Board of Appeals of Dunstable*, 418 Mass. 841, 641 N.E.2d 1334, 1336 (1994).

“Incidental” has also been defined as a comparatively inconsequential use of the property. *Manitowac Co, Inc. v. City of Sturgeon Bay*, 122 Wis. 2d 406, 414, 362 N.W.2d 432 (1984).

Ordinance language must be interpreted in the context in which it is used, in relation to closely-related ordinances. *Kalal*, 2004 WI 58, ¶ 46. When adopting DCO § 10.004(15), the County Board stated explicitly that an “agricultural related use” must be primarily related to farms, “including farms in the farmland preservation zoning district.” Therefore, it must be interpreted in the context of the purpose of farmland preservation zoning: “the production and harvesting of crops, livestock, animal products or plant materials.” DCO §§ 10.221(1)(a) and 10.222(1)(a). The manufacturing of small storage sheds simply is not directly related to agriculture or farmland preservation zoning.

The primary proposed use of the property is construction of sheds. According to the applicant’s own description they make storage sheds, “she sheds,” “he sheds,” green houses, children’s play houses, chicken coups, and outside office space. The primary use is not the provision of agricultural supplies, equipment, or inputs directly to farms, including farms in the farmland preservation zoning district. At best it is an incidental use, and does not reasonably fall within the definition of agricultural related use. There are certainly more appropriate use classifications, including “contractor, landscaping or building trade operations.”

You have also requested an opinion as to what the Zoning Committee’s options are for action in light of the town’s approval without conditions. Wisconsin Stat. § 59.69(5)(e)4 states that the committee shall act “on the petition either approving, modifying and approving, or disapproving it.” Stated another way, the committee can recommend approval of the petition with no conditions as approved by the town, amend the petition and add conditions, or recommend disapproval. The committee may amend the petition by adding conditions of approval “that may be appropriate or necessary to ensure compliance with the requirements of the ordinance and/or consistency with

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applicable town and county comprehensive planning policies.” DCO § 10.101(8)(d)1. If the petition were amended it would then be returned to the town for approval.

Please contact me if I can provide additional assistance regarding this matter.

Sincerely,

*David R. Gault*  
David R. Gault  
Assistant Corporation Counsel