



## DANE COUNTY PLANNING & DEVELOPMENT

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**TO:** ZLR Committee  
**FROM:** Majid Allan  
**DATE:** October 6, 2014  
**RE:** Review of Conditional Use Permit procedures and options for possible modification

This memo provides a brief overview of the county's conditional use permit procedures as well as some options to consider that may improve the process. Some questions and concerns have arisen with regard to how proposed conditional uses are reviewed against the 6 standards specified in section 10.255(2)(h). For example, the ordinance does not currently include any objective criteria to help determine if a proposed conditional use satisfies the standards.

Below are the six CUP standards from the county ordinance. Standards 1-5 are focused largely on the potential impacts that could be associated with a proposed conditional use, while standard 6 ensures compliance with other regulations of the zoning district in which the use is located.

1. That the establishment, maintenance and operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals comfort or general welfare.
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted will not be substantially impaired or diminished by the establishment, maintenance and operation of the proposed conditional use.
3. That the establishment of the proposed 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 will be made.
5. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.

For conditional uses in the county's state-certified farmland preservation zoning districts (A-1EX, A-4, and A-B), additional standards apply (see attached).

### **Characteristics of conditional uses**

As detailed in section 10.255 of the code, conditional uses have "*unique*" characteristics that distinguish them from permitted uses, and as such, cannot be allowed by right in a given district without, "*consideration...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.*"

## **Application requirements**

CUP applications must include the following:

- Detailed site plan
- Detailed operations plan (see attached CUP submittal requirements).
- Statement of intent
- Written explanation of how proposed use satisfies six ordinance standards.
- Mineral extraction, communication towers, and commercial wind energy systems have additional submittal requirements
- Other information that may be deemed necessary by the zoning administrator

The relative “quality” of CUP applications varies significantly. For relatively innocuous proposals, not all information is necessary or relevant. However, we have had issues with incomplete or insufficient submittals for significant proposals, such as mineral extraction. The site and operations plan requirements were recently added to the ordinance in an attempt to standardize the information being submitted with applications, and also to address impacts commonly associated with conditional uses (traffic, noise, environmental impacts, etc.).

## **Shared town/county authority**

In 2008, a change to the county zoning code granted towns binding authority over conditional use permits. Prior to the change, town action on CUPs was only advisory to the county zoning committee. Towns have 60 days from the date of the ZLR public hearing to take action on a CUP, and can request a 40 day extension if additional time is needed to review and act on the petition. If a town denies a CUP, no further action is required by the ZLR. Both the town and county must approve a CUP for it to become effective.

## **Appeal procedure**

Any person aggrieved by the grant or denial of a CUP can appeal the decision of the town board and/or ZLR committee to the full county board. Appeals must be filed with the zoning administrator within 20 days of the final town/county action on the petition. The county board must then set a “reasonable” time for the hearing of the appeal. Recently proposed OA 54, 2014-15 would make changes to the county board rules to establish a process for the conduct of the appeal hearing.

## **Other Communities**

Staff reviewed the ordinances of a number of other communities and found that, by comparison, Dane County’s CUP procedures and submittal requirements are quite robust. Below are some highlights:

### *Similarities with other communities*

- Most communities have similar review standards to ours
- Most communities also establish specific criteria for the most impactful uses (mineral extraction, communication towers, salvage yards, etc.)

### *Differences from other communities*

- Several communities’ review standards include consideration of the impact of a proposed use on the surrounding natural environment
- Most communities establish an appeal procedure through their Board of Adjustment, rather than the full county board
- Kenosha county’s CUP application procedure requires a pre-application meeting with staff and also requires that additional information be submitted for conditional uses proposed within a shoreland or floodplain area, and that notice be provided (along with the entire application) to the SE WI office of DNR

- Several communities require that staff review an application for completeness before scheduling the petition for a public hearing

### Options

Staff recommends that the following options be considered by the ZLR committee for possible inclusion in the ZLR rules & procedures.

1. Develop a list of considerations / criteria that the committee will apply to determine if a proposed use complies with the various standards in 10.255(2)(h), with particular emphasis on environmental features and nuisances. For example, the committee could consider the impact of a proposed use on the following environmental features:
  - existing topography
  - drainage features
  - erosion potential
  - vegetative cover
  - prevention and control of water pollution
  - location with respect to floodplains and floodways
  - others?

and also the likelihood of nuisances:

- noise
  - aesthetics / neighborhood character
  - odors
  - dust
  - light pollution
  - water runoff
  - traffic circulation
  - others?
2. For conditional uses proposed on properties that include areas of resource protection corridor, or that may be deemed by the committee to have potentially adverse impacts on water or other natural resources, request that the proposal and any mitigation measures be reviewed by Dane County Land & Water Resources staff. Alternatively, require that applicants provide more detailed analyses conducted by qualified engineers / professionals.
  3. Building upon the recommendation in #1, above, the committee could establish specific parameters with regard to particular nuisances. For example, limiting noise associated with a conditional use to no more than a certain decibel level at the property line. The limitation of this approach is that not all nuisances or impacts are easily measured / quantified (e.g., aesthetic impacts).
  4. Establish a policy with regard to incomplete or insufficient applications. The committee could establish a policy encouraging / requiring applicants for particular conditional uses to have pre-application meetings with staff. Alternatively, the committee could establish a policy indicating that it will not act on a significant CUP petition (mineral extraction, communication tower, salvage recycling, etc.) that fails to include all required information and supporting materials in the application.