

Staff Report



**Zoning and
Land Regulation
Committee**

**Questions? Contact:
Pam Andros – 261-9780**

Public Hearing: **June 25, 2019**

Zoning Amendment Requested:

**UTR (Utility, Transportation and ROW) District TO AT-35
(Agriculture Transition) District**

Size: **99 Acres**

Survey Required: **No**

Reason for the request:

**to allow land to be used for solar generating facility
UTR (Utility, Transportation and ROW) District TO AT-35
(Agriculture Transition) District**

CUP 02472

Town/Section:

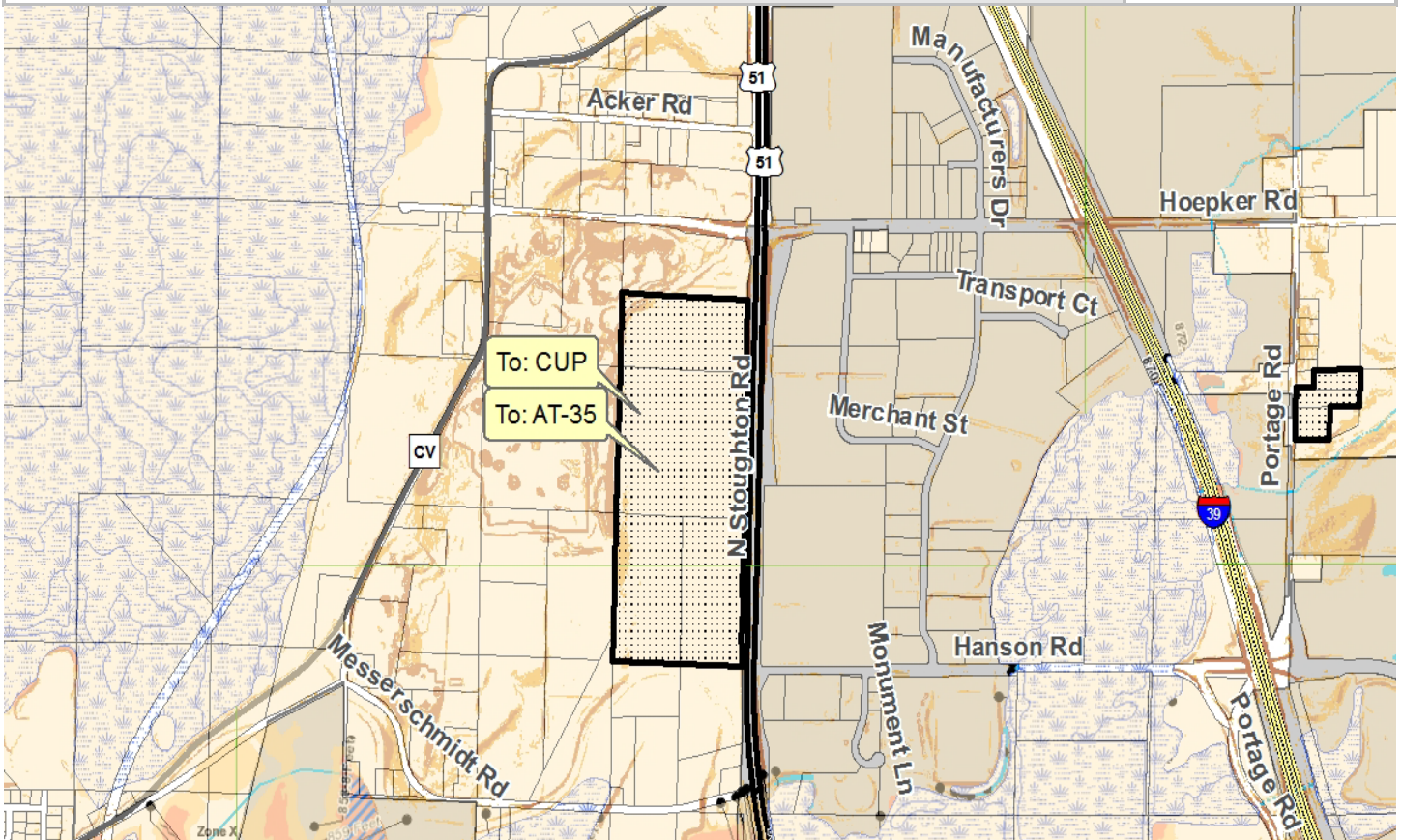
BURKE, Section 17

Applicant

**MG&E and
Dane County**

Address:

5723 US Hwy 51



DESCRIPTION: The applicant wishes to rezone the land from UTR (utility, transportation and Right-of-way) to AT-35 (Agriculture transition) to allow for development of a solar power generation project. AT-35 allows utility use as a permitted use, and renewable energy electricity generators as a conditional use. The solar generation plant will provide solar electricity to serve the needs of Dane County. MG&E will own and operate the facility and will lease the Airport land upon which it is located from Dane County.

CONDITIONAL USE PERMIT PROCESS: Conditional uses are those uses which, because of their unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review. The zoning ordinance includes specific requirements and standards for review and approval of conditional use permits.

In order to obtain a Conditional Use Permit, an applicant must provide **substantial evidence** to demonstrate that the application, and all requirements and conditions established by the county relating to the conditional use, are or shall be satisfied. Substantial evidence means, *“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 would accept in support of a conclusion.”*

Prior to granting or denying a conditional use, the zoning committee shall make written findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the following standards:

- General standards for approval of a conditional use under s. 10.101(7)(d)
- Any prescribed standards specific to the applicable zoning district
- Any prescribed standards specific to the particular use under s. 10.103

The zoning committee must deny a conditional use permit if it finds that the standards for approval are not met, and must approve if it finds that the standards for approval are met. The decision to approve or deny a conditional use permit must be supported by substantial evidence. Any conditions imposed must be based on substantial evidence, related to the purpose of the ordinance, reasonable, and, to the extent practicable, measurable.

As indicated above, many conditional uses are subject to prescribed standards found in section 10.103 of the ordinance. At a minimum, the zoning committee must find that all the following general standards for approval are met for the proposed conditional use:

- a. 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;
- b. 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;
- c. 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;
- d. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
- e. 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;
- f. That the conditional use shall conform to all applicable regulations of the district in which it is located.
- g. That the conditional use is consistent with the adopted town and county comprehensive plans.
- h. 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).

RELEVANT FACTS & INFORMATION

Location, size, existing use and characteristics of subject property: The property is located in section 17 of the town of Burke and totals approximately 99 acres. Existing uses of the property include cropland/agriculture and the remainder is open space. It has no significant environmental features. The subject property is north of the Dane County Regional Airport, and is bordered by a mineral extraction operation (to the west) and Hwy 51/Stoughton Road (to the east).

Current zoning and applicable district regulations: Current zoning is UTR (Utility, Transportation and Right-of-Way). An application has been made to rezone the property to AT-35 (Agriculture Transition) under petition #11431. The AT-35 district is intended to accommodate nonfarm urban or suburban development. AT-35 allows utility use as a permitted use, and renewable energy electric generating facilities as a conditional use, as described in s.10.231(3)(e).

Utilities, access, drainage, and other necessary site improvements: Applicant has submitted documents including a scaled drawing of the property showing proposed improvements and an operations plan (please see attached application materials). Improvements include an access road, security fence, screening from the neighboring mineral extraction operation, and various types of energy generating equipment. The site plan shows setbacks and the airspace restricted area where no construction will take place.

Operations Plan: Madison Gas & Electric (MG&E) is proposing to build a solar generation plant ('facility') consisting of up to 58 solar modules and associated collection equipment that delivers that power to the electrical grid. The facility will have a maximum capacity of approximately 9 megawatts (MW). The onsite equipment will consist primarily of solar modules mounted on single axis trackers to generate direct current electricity. Inverters that are integrated into the facility will convert the DC electricity to alternating current (AC) electricity, to allow it to be delivered to the electric grid. There will also be an electrical equipment pad and a 15kV 3-Way Sectionalizing Cabinet located on this pad.

The facility will not be manned and will not be open to the public. Once construction is complete, operations and maintenance personnel (one or two people) will access the site a couple of times per month for inspection or minor maintenance. Because no customers will be served at the facility there will be no traffic associated with the use. There will be no outside storage or lighting. The only outdoor activities will be inspection and periodic maintenance of the system. As noted on the site plan, there will be a security fence around the perimeter of the facility. Signs will be placed on this fence to identify MG&E as the owner of the facility, that there are high voltage facilities inside the fence, and that unauthorized personal should not enter.

STAFF ANALYSIS:

Staff believes that the applicant has submitted substantial evidence in the form of detailed information and plans for operation of the use and that the proposal will satisfy the applicable standards for approval of a conditional use permit for a renewable energy electric generating facility.

The standard conditions of approval applicable to all conditional use permits, and found in section 10.101(7)(d)2 of the Dane County Zoning Ordinance, must be met. Please note that the conditions may need to be changed or additional conditions added to address potential nuisances that may come to light during the public hearing.



TOWN PLAN: The subject property is in the *Industrial/business* future land district of the town of Burke Comprehensive Plan, and it is shown as being in the Madison boundary adjustment area of the cooperative plan. The Madison *Generalized Future Land Use Plan* shows the property in the *Industrial* future land use district.

PUBLIC INPUT: The City of Madison shared concerns regarding a road extension of Hanson Road west to County Highway CV. The road connection was identified in the city's adopted Hanson Road Neighborhood Development Plan (NPD). After further review, the City of Madison Planning Department found that the development would not infringe on the extension of Hanson Road.

RESOURCE PROTECTION: There are no environmentally sensitive features on the property.

STAFF: Staff recommends approval.

ZLR Public Hearing 6/25/19: The petition was postponed due to no town action.

TOWN: Approved, subject to following 14 conditions. Note that the first 13 are standard conditions of approval for all CUPs found in section 10.101(7)(d)2 of the county zoning code.

- 1) Any conditions required for specific uses listed under s.10.103 of County Ordinances;
- 2) The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operation plan and phasing plan;
- 3) New and existing buildings proposed to house a conditional use must be constructed and maintained to meet current requirements of applicable sections of Wisconsin Commercial Building Code or Uniform Dwelling Code;
- 4) The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the county zoning administrator upon request;
- 5) Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the county zoning administrator upon request;
- 6) Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46 Dane County Code;
- 7) All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan;
- 8) Off-street parking must be provided, consistent with s. 10.102(8) of County Ordinances;
- 9) If Dane County Highway Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be borne by the landowner. Costs borne by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use;
- 10) The County Zoning Administrator or designee may enter the premises of operation in order to inspect those premises and to ascertain compliance with these conditions or investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site;
- 11) The owner must post, in a prominent public place and in a form approved by the county zoning administrator, a placard with the approval of the Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division;
- 12) The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours;

- 13) Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit. The holder of a conditional use permit shall be given reasonable opportunity to correct any violations prior to revocation;
- 14) Obtain approval from the FAA and compliance with any requirements thereof.