



OFFICE OF THE CORPORATION COUNSEL

March 16, 2015

Supervisor Patrick Miles
Chair, Zoning & Land Regulation Committee
Room 106, City-County Building
Madison, WI 53704

RE: Zoning Committee Authority When Considering Revocation of a
Conditional Use Permit.

Dear Supervisor Miles:

You have requested an opinion as to whether the Zoning Committee has the authority to revise the conditions of a conditional use permit (CUP) in a proceeding for revocation under DCO §10.255(2)(m). In my opinion the Committee has the inherent authority to amend a CUP in lieu of revocation, but subject to approval by the town in which the CUP is located. In the alternative, a CUP could be amended upon the agreement of the Committee, the permittee and the town.

CUPs are an optional additional procedure which the county is authorized to utilize under Wis. Stat. §59.69(6). That subsection authorizes the county to adopt any procedures not in conflict with the statutes. Consequently, there is no statutory guidance regarding CUP procedures. Dane County has adopted detailed procedures for CUPs in §10.255(2), including revocation of CUPs. Section 10.255(2)(m) states:

(m) Revocation of a conditional use permit. If the zoning committee finds that the standards in subsection (2)(h) and the conditions stipulated therein are not being complied with, the zoning committee, after a public hearing as provided in subs. (2)(f) and (g), may revoke the conditional use permit. Appeals from the action of the zoning committee may be as provided in sub. (2)(j).

The express language of sub (2)(m) does not address amending a CUP. However, it is my opinion that if the committee finds that the CUP is not being complied with, it has the inherent authority under sub (2)(m) to amend the CUP, if such action best serves the interests and standards set forth in §10.255(2). However, any amendment of the CUP would be subject to approval by the town pursuant to §10.255(2)(c). If the town does not approve the amendment¹, the Committee's authority under sub. (2)(m) is limited to revocation.

¹ Subject to appeal to the County Board under DCO §10.255(2)(b)2.

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It is also my opinion that a CUP can be amended without a finding of a violation if there is agreement by all the interested parties. The Zoning Code does not address an amendment of a CUP. However, it is my opinion that there is inherent authority to amend a CUP after public hearing, upon the agreement of the permittee, Zoning Committee and town.

Please contact me if I can be further assistance regarding this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Gault', with a long horizontal flourish extending to the right.

David R. Gault
Assistant Corporation Counsel