

Public comments received on draft Dane County Zoning Ordinance to date. For subcommittee review.

9/14/2017

Commenter	Page # (7-18 Review Draft)	Line #s (7-18 Review Draft)	Line #s	Section	Subs.	Full Citation	Comment	Staff recommended response.	Complete in revised draft?
Mark Hazelbaker	0	0	6118	10.800		Subchapter II	Where are the sign regulations?	See sign ordinance regulations in revised text.	Y
Mark Hazelbaker	23	165	171	10.004	(7)	10.004(7)	The definition of “adult book store” at line 164 is continued from the current ordinance. It is probably out of date. See also lines 2447 – 2471.	Corporation Counsel and county insurance agency have reviewed for constitutional compliance. New citations added to statement of purpose for AED district.	Y
Mark Hazelbaker	24	198	202	10.004	(9)	10.004(9)	Definition (9) [lines 197 – 200] refers to town plans that have been adopted by the County. There is no provision in sec. 66.1001, Wis. Stats., for adoption of one jurisdiction’s comp plan by another. The town plans are the town plans.	No changes necessary. This is existing language in the current ordinance. Towns do have the statutory right to adopt their own comprehensive plans. However, the county is under no legal obligation to adopt such plans into its own comprehensive plan.	Y
Mark Hazelbaker	45	997	972	10.004	(123)	10.004(123)	The definition of “racetrack” at (122) [lines 994-997] is so restrictive that it may exceed the statutory prohibition against inconsistent local regulation of vehicles, secs. 349.03 and 349.06, Wis. Stats. I agree that there should be regulation, but 30 minutes in 24 hours seems like a low threshold.	Discuss with subcommittee and sponsor.	
Mark Hazelbaker	51	1198	1158	10.004	(160)	10.004(160)	The definition of “urban services area” at (159) [lines 1195 – 1199] doesn’t quite track how sewer service areas are delineated. Perhaps it should simply refer to sewer service areas delinerated by the Wisconsin DNR, which is the agency that does that.	No changes necessary. "Urban Service Areas" are not defined in statute, but in the Dane County Regional Planning Framework, the Dane County Comprehensive Plan and the Dane County Water Quality Plan. "Sewer service areas" are ultimately approved by the DNR, but are based on Urban Service Areas as shown in the adopted Dane County Water Quality Plan.	Y
Mark Hazelbaker	54	1278	1236	10.101		10.101 ()	In section 10.101, Administration, it would be wonderful if the ordinance would make a commitment to create a unified application for land use approvals issued by the County. It also would be helpful if the ordinance would direct the P&D staff to development a set of submittal requirements for various types of applications. As a matter of readability, section 10.101 might be broken up into several sections.	This might be awkward to put into ordinance language, but could certainly be accomplished administratively. Will review 10.101 to see if there is an opportunity for streamlining.	Y
Mark Hazelbaker	56	1367	1325	10.101	(3)	10.101(3)(b)	In section 10.101 (3)(a), [lines 1355 to 1358] and at section 10.500 (1)(c) 5. [Lines 5877 to 5881] the ordinance contains language which gives zoning inspectors the right to enter land without a warrant. That language, which traditionally has appeared in zoning ordinances, is unconstitutional, see, City of Los Angeles, Calif. v. Patel, 135 S.Ct. 2443, 2452, 192 L. Ed. 2d 435 (2015), cited in Gutierrez v. City of E. Chi., No. 2:16-CV-111-JVB-PRC, 2016 U.S. Dist. LEXIS 138374, at 17 (N.D. Ind. Sep. 6, 2016).	Response by Dave Gault: "On the warrantless search provisions, I tend to agree with Mark. It tends to come down to whether there is consent. Courts have not looked favorably on language that purported to give consent if a person simply applied for a permit, including the Wisconsin Court of Appeals. I’m comfortable with the statutory provision for special inspection warrant if a landowner won’t consent to a search. I think consent up to time of issuance of a certificate of compliance is ok." See revised text.	
Mark Hazelbaker	56	1381	1349	10.101	(4)	10.101(4)(b)	In section 10.101 (4)(b), [lines 1378 to 1384] stop work order, two suggestions. If there is a zoning and building permit for the project, the ordinance should provide for making an attempt to contact the owner before issuing an order. Second, the ordinance should provide for some prompt method by which the owner can obtain an administrative review of the order. See Weinberg v. Whatcom Cty., 241 F.3d 746, 755 (9th Cir. 2001); Mohamed v. Cty. of Sacramento, No. 2:16-cv-01327-JAM-EFB, 2017 U.S. Dist. LEXIS 28308, at *10 (E.D. Cal. Feb. 27, 2017); Paeth v. Worth Twp., No. 08-13926, 2010 U.S. Dist. LEXIS 123479, at *2 (E.D. Mich. Nov. 22, 2010). The same comment applies to lines 1677 through 1682].	Response by Dave Gault: "On the Stop Work Order issue, I think if the SWO provides notification of the provisions regarding appeal to the BOA that’s good enough." See revised text.	
Town of Verona	61; 67	1566; 1817; 1830; 1833	1513	10.101	(7)	10.101(7)(c)2.b.	...time approve the grant, approve with conditions or deny...., better to have a set time, like 30 days	No changes necessary. ZLR flexibility on deadlines is necessary to allow for town board action , which may take up to 60 days per later sections of the ordinance.	Y

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Jim Elleson	65	1740	1671	10.101	(8)	10.101(8)	Does this subsection mean that other officials can petition to rezone a property without the owner's involvement?	Yes, as required by s.59.69(5)(e), Wis. Statutes. This is unchanged from current ordinance. "Blanket rezones" are an example of zoning petitions initiated by town boards or county board supervisors, rather than the landowner.	Y
Mark Hazelbaker	70	1924	1850	10.102	(2)	10.102(2)(a)4.	At lines 1921 – 1922, prohibiting all plumbing fixtures in accessory buildings is too restrictive. It may conflict with OSHA requirements for eyewash, shower, handwashing and toilet facilities, and it is not reasonable in all cases. Although there is a need to avoid second residences creeping into existence, this is too broad.	No changes recommended. The conditional use permit process is appropriate, and not too onerous, for these kind of applications. Note also changes related to sanitary facilities for limited family businesses and other operations approved by CUP.	Y
Roger Lane	83	2425	2469	10.103	(1)	10.103(1)	Line 2425 – Accessory dwelling units – Can the accessory dwelling unit be separated from the living area by the garage? Is the existing house, then garage, then accessory dwelling unit with no common wall to house acceptable?	Existing language would permit this arrangement. Check with Subcommittee to see if this is acceptable.	Y
Town of Verona	112	3390	3559	10.221	(4)	10.221(4)(c)	I think 100 ft width is too small, 200 ft would be better to fit the the 1 acre requirement	Recommend eliminating minimum lot width entirely, for consistency with FP-35. FP-1 allows for no residential use, and is often used to accommodate remnant farm fields left over after farms have been divided. Given the limited uses in the FP-1 district, this hasn't been a problem to date.	Y
Town of Verona, Ro	116; 120; 120; 123; 124; 127; 127; 130; 131; 133; 134; 136; 136; 138; 138; 140; 140; 142;	3522; 3532; 3667; 3678; 3770; 3783; 3912; 3923; 4015; 4026; 4122; 4133; 4203; 4213; 4273; 4283; 4343; 4353; 4413; 4423; 3521	3566	10.222	(5)	10.222(5)	In order to avoid future problems it would be good to have new structures which house livestock be 100 ft from lot lines. We are getting development of farm land (A3) and if the new farm bldg is 100 ft from line, this will avoid some issues in the future - just a thought.	Recommend maintaining 100-foot setback from all Residential and Hamlet Districts, 50-foot setbacks from Rural Residential due to smaller lot sizes and retain 10-foot setback from other districts. This will maintain the status quo, avoid creating nonconforming structures and provide reasonable protection of the enjoyment of neighboring properties.	Y
Roger Lane	116	3522	3566	10.222	(5)	10.222(5)	Line 3522 – Shouldn't we reduce the building setback for buildings housing livestock to 50 feet, to be consistent with other district setbacks for housing livestock?	Recommend maintaining 100-foot setback from all Residential and Hamlet Districts, 50-foot setbacks from Rural Residential due to smaller lot sizes and retain 10-foot setback from other districts.	Y
Doug Maxwell	147	4555	4568	10.252	(1)	10.252 ()	Consider creation of an SFR-2 zoning district, with a 2-acre minimum lot size and no animal use (small scale farming) permitted.	Submit to subcommittee for consideration.	