

(e) In considering land use issues for areas adjacent to local municipalities, notice shall be sent by certified mail to the affected municipality or municipalities. The notice shall include the location, description of use, requested zoning or permit and the date, time and place of the county public hearing. The notice shall state that it shall be incumbent upon the affected municipality to inform the county zoning agency of any concerns, potential problems or questions relative to the impact of the proposed use on a wellhead protection area.

(2) *Conditional uses.* (a) *Statement of purposes.* The development and execution of this ordinance is based upon the division of the county into districts, within which districts the use of land and buildings, and bulk and location of buildings and structures in relation to the land are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts, without consideration, in each case, 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. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses. Such uses are classified as conditional uses and are of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities. The following provisions are then established to regulate those conditional uses which require special consideration.

(b) *Authority.* The zoning committee is authorized by Wis. Stat. § 59.69(2)(bm) to grant conditional use permits. Subject to sub. (c), the zoning committee, after a public hearing, shall, within a reasonable time, grant or deny any application for conditional use. Prior to granting or denying a conditional use, the zoning committee shall make findings of fact based on evidence presented and issue a determination whether the prescribed standards are met. No permit shall be granted when the zoning committee or applicable town board determines that the standards are not met, nor shall a permit be denied when the zoning committee and applicable town board determine that the standards are met.

(c) *Town/zoning committee action.* 1. The town board of the town where a conditional use is proposed shall be given notice and opportunity to approve or disapprove a conditional use. The town board shall communicate its position in writing on the conditional use application within sixty (60) days of the date of the public hearing.

The town board may request an extension of the review period of up to forty (40) days by submitting a written request to the zoning committee. The zoning committee shall not take action on the application for conditional use until the time period for action by the town board has expired.

2. Either the town board or the zoning committee may deny an application for conditional use permit. If the town board action is denial no further action by the zoning committee is required. The zoning committee may approve or deny a conditional use permit without town action if the town board fails to act within the time period set forth in sub. 1. above.

3. Town board and zoning committee actions shall be supported by written findings of fact.

Failure of a town board or the zoning committee to make written findings of fact shall constitute approval of the application. Except for conditional use permit applications for a small scale electric generating station, using wind or solar energy, under s. 10.123(3)(n), written findings of fact shall, at a minimum, address the standards enumerated in sub. (2)(h) and, where applicable, s. 10.123(3). Written findings of fact for conditional use permit applications for a small scale electric generating station under s. 10.123(3)(n), using wind or solar energy, shall exclusively address the standards enumerated in sub. (2)(o). All findings shall be based solely upon the evidence within the public record.

4. If the town board approves the application subject to conditions and such conditions are amended or deleted by the zoning committee, the conditional use permit as approved by the zoning committee shall be submitted to the town board for approval of the zoning committee's conditions or denial of the permit. The town board shall submit a certified resolution indicating their action to the zoning administrator within forty (40) days of the approval by the zoning committee. If the town board does not act within the forty (40) day time period, the permit shall be deemed approved. If the town board denies the permit with the conditions as

amended by the zoning committee, the permit shall be deemed denied.

(d) Initiation of conditional use. Any person, firm, corporation or organization having a freehold interest, a possessory interest entitled to exclusive possession, a contractual interest which may be a freehold interest, or an exclusive possessory interest which is specifically enforceable in the land for which a conditional use is sought, may file an application to use such land for one or more of the conditional uses provided for in this ordinance provided that the conditional use is one which is permitted by the zoning ordinance in the zoning district where the parcel is located.

(e) Application for conditional use. An application for a conditional use shall be filed with the zoning administrator on a form prescribed by the zoning administrator. The application shall be accompanied by such plans and other information as required by this section or as may be prescribed by the zoning administrator or the zoning committee, and shall include a statement in writing by the applicant and adequate evidence showing that the proposed conditional use shall conform to the standards set forth in par. (h) hereinafter.

1. Site plan. All applications for a conditional use permit must be accompanied by a site plan, drawn to a scale large enough to show detail, that includes, at a minimum the following information:

- a.** All buildings and all outdoor use and/or storage areas, existing and proposed, including provisions for water and sewer. Existing and proposed uses must be clearly labeled.
- b.** All dimensions and required setbacks, side yards and rear yards.
- c.** Location and width of all driveway entrances onto public and private roadways, and of all interior roads or driveways. Traffic flow patterns must be indicated.
- d.** Parking lot layout in compliance with Section 10.18 of the Dane County Zoning Ordinance.
- e.** Proposed loading/unloading area.
- f.** Zoning district boundaries in the immediate area. All districts on the CUP property and on all neighboring properties must be clearly labeled.
- g.** All natural features such as lakes, ponds, streams (including intermittent watercourses), flood zone and wetland areas, and slopes over 12% grade.

h. The Zoning Administrator may require, at his or her discretion, site plans to show additional detail, including, but not limited to contours, drainage, screening, fences, landscaping, lighting, signs, refuse dumpsters, and possible future expansion areas.

2. Operational plan. All applications for a conditional use permit must be accompanied by an operational plan that describes, at a detail acceptable to the Zoning Administrator, the following characteristics of the operation:

- a.** Hours of operation.
- b.** Number of employees.
- c.** Anticipated noise, odors, dust, soot, runoff or pollution and measures taken to mitigate impacts to neighboring properties.
- d.** Descriptions of any materials stored outside and any activities, processing or other operations taking place outside an enclosed building.
- e.** Compliance with county stormwater and erosion control standards under Chapter 11 or Chapter 14, Dane County Code.
- f.** Sanitary facilities, including adequate private onsite wastewater treatment systems and any manure storage or management plans approved by the Madison & Dane County Public Health Agency and/or the Dane County Land and Water Resources Department.
- g.** Facilities for managing and removal of trash, solid waste and recyclable materials.
- h.** Anticipated daily traffic, types and weights of vehicles, and any provisions, intersection or road improvements or other measures proposed to accommodate increased traffic.
- i.** A listing of hazardous, toxic or explosive materials stored on site, and any spill containment, safety or pollution prevention measures taken.
- j.** Outdoor lighting and measures taken to mitigate light-pollution impacts to neighboring properties.
- k.** Signage.

(f) Hearing on application. Upon receipt of the application and statement referred to in par. (e) above, the zoning committee shall hold a public hearing on each application for conditional use at such time and place as shall be established by the zoning committee. The hearing shall be conducted and a record of the proceedings shall be preserved in such manner and according to such procedures as the zoning committee shall, by rule, prescribe from time to time.

(g) Notice of public hearing shall be given by publication of a Class 2 notice as provided for in chapter 985 of the Wisconsin Statutes. Notice to parties of interest shall be according to policies established by the zoning committee.

(h) *Standards.* No application for a conditional use shall be granted by the town board or zoning committee unless such body shall find that all of the following conditions are present:

- 1. 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;
- 2. 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;
- 3. 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;
- 4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
- 5. 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; and
- 6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

(i) *Conditions and guarantees.* Prior to the granting of any conditional use, the town board and zoning committee may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community and to secure compliance with the standards and requirements specified in subsection (h) above, or subsection (o) in the case of small scale electric generating stations under 10.123(3)(n), using wind or solar energy. In all cases in which conditional uses are granted, the town board and zoning committee shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.

1. In addition to such other conditions as the town board and zoning committee may impose upon any conditional use, in the case of dependency living arrangements, each body shall require as a condition of approval that the use shall be discontinued at the time that a dependent person ceases to reside in the secondary living area. In no event shall the space so created be used for general rental purposes. The town board and zoning committee may, if they so desire, require the owner to record deed restrictions implementing these additional restrictions and such deed restrictions may be required to run in favor of the county, the town and adjacent landowners.

(j) *Appeal.* Any person aggrieved by a decision of the zoning committee or a town board regarding the grant or denial of a conditional use permit may appeal to the Dane County Board of Adjustment within 30 days of the final decision.

(k) *Effect of denial of application.* No application for a conditional use which has been denied wholly or in part shall be resubmitted for a period of one year from the date of said denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the zoning committee.

(L) In any case where the holder of a conditional use permit issued under this ordinance has not instituted the use or begun construction within one year of the date of approval, the permit shall be null and void.

(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).

(n) *Abandoned conditional uses.* Any use, for which a conditional use permit has been issued, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated and any future use shall be in conformity with these ordinances.

(o) *Standards for the review of small scale electric generating stations using wind or solar energy.*

1. An application for a conditional use permit for a small scale electric generating station under s. 10.123(3)(n) using wind or solar energy shall

be considered by the town and the committee in conformance with Wis. Stats. s. 66.0401(4).

2. No condition or restriction may be placed upon a wind energy system or solar energy system unless such restriction or condition:

- a.** serves to preserve or protect the public health or safety;
- b.** does not significantly increase the cost of the system or significantly decrease its efficiency; or
- c.** allows for an alternative system of comparable cost and efficiency.

(3) Statement of purposes. Conditional rezonings are authorized as provided herein to enable adaptation of zoning to unique circumstances regarding particular sites, uses or neighborhoods when the county has not had sufficient experience with the type of use in question to lead to treatment of the use as a conditional use.

(a) Conditions on rezonings.

1. The zoning committee may recommend and the county board may adopt an ordinance effecting an amendment of the zoning district map containing the condition that the change in the map will take effect on such date occurring within a specified number of months of the date of county board approval of the amendment when the first on-site inspection for building location is made and approved for the project sought to be established, and in the event such approved inspection has not occurred by the end of the specified time period, the possibility of making effective the rezoning will then be terminated.

2. The zoning committee may recommend and the county board may adopt an ordinance effecting an amendment of the zoning district map containing the condition that the change in the map will take effect on such date occurring within a specified number of months of the date of county board approval of the amendment when a restrictive covenant has been recorded binding the property to conditions specified in the amending ordinance, and in the event such covenant is not recorded by the end of the specified time period, the possibility of making effective the rezoning will then be terminated.

(b) Conditions specified to be in such required covenants shall be related to the purposes of the ordinance. They may include, as specific cases warrant, limits of permissible uses to less than the full range of uses otherwise allowable in the district into which the land is being placed. Enforcement rights over such covenant controls shall be afforded to the county, the town and

owners of property within 300 feet of the site. The covenant controls shall be amendable or repealable upon petition of the owner of the lands subject to the controls and approval by the county board after a hearing similar to a rezoning hearing. A rezoning of the lands to a different zoning district shall also act to repeal the covenant controls. Except as provided above, the covenants shall run with the land.

(c) Other similar controls appropriate to handling by covenant provisions may also be imposed.

[History: (1)(e) cr., Sub. 1 to OA 32, 1992-93, pub. 04/14/93; (2)(c) cr., Sub. 3 to OA 36, 1987-88, pub. 08/02/88; (2)(c)-(m) renum. and (2)(c) cr., OA 9, 1993-94, pub. 04/20/94; (2)(j) am., OA 20, 1989-90, pub. 02/27/90; (2)(j) am., OA 50, 1987-88, pub. 06/18/88; OA 18, 1995-96, effecting (2)(j), vetoed by towns; (2)(b), (e), (f) and (j) and (3) am., OA 16, 1996-97, pub. 01/16/97; (1)(b) and (2)(L) am., and (2)(g) recr., OA 3, 2000-01, pub. 10/19/00; (2) am., OA 54, 2007-08, pub. 06/19/08; (1)(d) am., OA 6, 2008-09, pub. 09/16/08; (2)(e) am., OA 10, 2010-11, 12/10/10; (2)(c)3, (2)(i), and (2)(j) am., (2)(o) cr., Sub. 1 to OA 37, 2010-11, pub. 06/23/11; (2)(b), (2)(c)2., (2)(c)4. and (2)(j) am., 2016 OA-67, pub. 03/21/17.]

10.26 BOARD OF ADJUSTMENT.

(1) Personnel, term and compensation. The board of adjustment shall consist of five (5) members, appointed by the county executive with the approval of the county board, each serving for a term of three (3) years, the terms beginning July 1st and being staggered so that the terms of not more than two members shall expire in any year. Members shall reside in the unincorporated areas of the county and no two members shall be from the same town. Compensation of members shall be the same as allowed county board members for attendance at committee meetings.

(2) Rules, meetings and minutes. The county board shall adopt rules for the conduct of the business of said board of adjustment, in accordance with the provisions of any ordinance or ordinances adopted pursuant to sections 59.69, 59.692 or 87.30, Wis. Stats. The board of adjustment may adopt further rules as necessary to carry into effect the regulations of the county board. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and