

CONDITIONAL USE PERMITS

Thursday, March 5, 2020

3:30 to 4:30 p.m

Town of Verona Hall

7669 County Road PD, Verona, WI

WHY ALL THE CONCERN?

Wisconsin Legislative Act 67

- New state law adds rules for processing CUPs
- CUPs must use “quasi-judicial” process
- Decisions must:
 - Be based on factual evidence
 - NOT be based on personal preference, speculation, or political platform
 - Be based on standards in the zoning ordinance
- Conditions must be reasonable, related to the purpose of the ordinance, and if possible, measurable

DIFFERENCE BETWEEN A REZONE AND A CUP

REZONES

- Rezones are ordinance amendments
- Discretionary
- Informal consultation OK

- Wide public discussion
- Town makes recommendation to County Board
- Town formal hearing not required

CONDITIONAL USE PERMITS

- CUPs are “quasi-judicial”
- Decisions must be based on findings and facts
- Informal consultations NOT OK
 - All discussions must take place in public meeting
- Formal review of factual evidence
- Town makes unbiased decision
- Town formal hearing required

WHAT TO DO: SEPARATE REZONE AND CUP APPLICATIONS

- Acting on rezone petitions and CUP applications at the same time will limit the Town's decision capability and will create difficulties in defending decisions
- If the land uses listed within the proposed zoning district are not well-suited for the area, zoning should not be assigned to the property
- A Town's discretion is limited under a CUP review – Quasi-judicial process
- If a proposal requires a rezone and a CUP, a denial of the zoning will make the CUP application moot

WHAT TO DO: ESTABLISH A FORMAL PROCEDURE ON CUPS

- Recommend plan commission and town board hold joint public hearing
 - Notice must state that both bodies will be present
- Set rules for submittal of written information / evidence
 - What will be accepted into the record? By when?
- Set rules for conducting public hearings
 - Order of speakers (applicant first, those in support, those opposed, rebuttal by applicant)
 - Time limits for speakers (Ex: 3 minutes each)
 - All comments should addressed to plan commission / town board – no argumentation between parties

WHAT TO DO: ESTABLISH A FORMAL PROCEDURE ON CUPS

- Set rules for taking action on CUPs
- Consider “fast track” for non-controversial applications
 - No opposition presented at hearing
 - No unresolved issues
 - No substantive concerns
 - All members agree application is not controversial
- Controversial applications should be postponed to provide time for deliberation, etc.
- The CUP procedure should be written down, formally adopted, and consistently followed.

WHAT TO DO: PUBLIC HEARING NOTICE

- Public Hearing posted twice (Class 2)– minimum 2 weeks in advance, and one week prior to hearing in either:
 - 3 public locations OR
 - 1 public location **and** on the town website
 - Locations should be pre-determined by Town Board and referenced in adopted procedures
- Use a separate notice other than the agenda
- The notice includes: meeting location, date, time, owner of property / applicant, address, CUP description, and proposed project

Examples of Town notices: Good or Bad?

Notice

Town of Homeland

The Homeland Town Board will hold a meeting at the Town Hall on June 10, 2020.

AGENDA:

1. Call to order.
2. Pledge of Allegiance.
3. Minutes of the previous meeting.
4. Review and consider a Conditional Use Permit for a party barn on Jim Smith's property.
7. Treasurer's report.
8. Police report
9. Future meetings and agendas.
10. Adjourn.

Notice of Public Hearing Town of Homeland

Notice is hereby given that a public hearing will be held before the Town Board at the Homeland Town Hall located at 415 Baxter Road on Tuesday, June 10, 2020 at 6:30pm regarding the following proposal. All persons will be afforded the right to speak upon the proposal. More information regarding the proposal is on file at the Town Hall.

Conditional Use Permit for Indoor Commercial Entertainment
Applicant: John Smith
Location: 850 Hill Road, Section 12, Town of Homeland
Proposal: convert existing barn into a building for public events

Town of Homeland

The Homeland Town Board will hold a meeting at the Town Hall located at 415 Baxter Road on Tuesday, June 10, 2020 at 6:30pm

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Minutes of the previous meeting
4. PUBLIC HEARING
Conditional Use Permit for Indoor Commercial Entertainment
Applicant: John Smith
Location: 850 Hill Road, Section 12, Town of Homeland
Proposal: convert existing barn into a building for public events
5. Review and Consider a conditional use permit for John Smith to allow indoor commercial entertainment to occur on the property located at 850 Hill Road.
6. Treasurer's report
7. Police report
- 9 Future meetings and agenda
10. Adjourn

WHAT TO DO: PRIOR TO THE PUBLIC HEARING

- Application materials & other submittals provided to all members
- May want to post application and other materials on town website
- Post agenda for the hearing / meeting at least 24 hours before
 - PC / Board can conduct other business following the hearing – including “fast tracked” applications

WHAT TO DO: CONDUCTING THE PUBLIC HEARING

- Goal is to collect evidence and hear testimony
- At joint Plan Commission / Town Board public hearing
 - Use registration slips or a sign up sheet to organize speakers
 - Inform public of the rules of the meeting
 - Collect registration slips and written testimony and retain as part of the official record
 - Chair should maintain order
- Close the public hearing once all testimony is received

WHAT TO DO: MAKING A DECISION

- Open a new meeting for the plan commission and town board
 - Goal is to review evidence and testimony and deliberate
 - Not a public hearing – no new testimony collected
 - Noticed as “discussion and possible action” on meeting agenda
 - Does not have to be on the same day
- Identify all legitimate concerns
 - Distinguish between personal opinion and substantial evidence
- Can conditions be imposed to resolve concerns?
- Additional information may be needed – e.g., traffic study, expert opinion

WHAT TO DO: MAKING A DECISION

- Determine if the activity meets the zoning ordinance standards for CUP approval
 - Standards for approval of a CUP now include “Must be consistent with adopted town and county comprehensive plans.” See section [10.101\(7\)\(d\)](#)
 - CUPs in FP (Farmland Preservation) zoning districts subject to 5 additional standards – See section [10.220\(1\)\(a\)](#)
 - Any prescribed standards specific to the particular use – See section [10.103](#)
 - Ex: cell towers, mineral extraction, ag entertainment
- Decisions must be supported by substantial evidence and findings of fact
 - If denied, cite the specific standards not met and *why* not met

WHAT TO DO: CONDITIONS OF CUP APPROVAL

- Ordinance includes standard conditions that apply to all CUPs
 - Ex: CUP must conform to site and operational plans; new buildings must meet building code; adequate off street parking; failure to comply with any conditions may result in revocation
- Ordinance includes guidance for optional conditions per Section 10.101(7)(d)2b
 - Ex: Expiration dates, noise limits, screening, hours of operation
- Certain uses subject to specific conditions per Section 10.103 – e.g., cell towers
- Must be reasonable, related to ordinance, and if possible, measurable

WHAT TO DO: REVIEW YOUR COMPREHENSIVE PLAN

- Review and update comp plan to address conditional uses
- Example: Town of Dunn [“Requirements for Conditional Use Permit Requests”](#)
- Consider various factors when reviewing CUPs:
 - Consistent with plan goals, objectives, policies?
 - Complementary / compatible with existing or permitted uses on adjoining properties?
 - Impacts of noise, dust, light, odor, contamination, parking, traffic associated with use on public safety and rural character
 - Need for / availability of public services or infrastructure?
 - Effect of uses on water or air pollution, soil erosion and rare / irreplaceable natural resources

WHAT NOT TO DO.

1. Don't talk about a CUP outside of a public meeting / hearing.
2. Don't hold a pre-application meeting.
3. Don't prejudge a CUP application.
4. Don't combine the CUP decision with a rezone decision.
5. Don't consider information NOT included in the application or presented at a public hearing or subsequent meeting.

RESOURCES ARE AVAILABLE

- Resources for Town officials
 - [Understanding the Conditional Use Process](#) pamphlet on P&D website
 - Developing checklist to assist in review / action on CUPs
 - Examples to reference for CUP procedures, public hearing notice
 - Developing model CUP rules & procedures
 - Improved Dane County CUP application [form](#)
 - Ongoing advice and assistance from County & DCTA staff – CALL US!

QUESTIONS??

Dane County Planning & Development

Website: <https://plandev.countyofdane.com/>

Phone: 608-266-4266

Dane County Towns Association

Website: <http://danecotowns.net/>

Phone: 608-577-9997

