

Notes from 3/5/2020 Educational Forum on CUPs

Q: We have a Town Board member that has suggested that we reopen CUPs to reflect this process. Should we do that?

A: That is not recommended. This process is being suggested to protect towns from possible legal action related to new state law, it is not in any way intended to suggest that previous administration of CUP applications was done inappropriately.

Q: When you approve a zoning change, can you approve it without certain conditional uses?

A: The county zoning code authorizes the use of “conditional zoning” to limit the allowable land uses on a property where deemed, “...*necessary to ensure compliance with the requirements of the ordinance and/or consistency with applicable town and county comprehensive planning policies*”. We suggest this be done by conditioning rezone petition approvals with a requirement that a property be deed restricted to, “limit the uses **exclusively** to a, b, and c” (rather than deny uses e and f).

Q: You recommend against pre-application meetings. What about site visits?

A: We recommend against CUP pre-application meetings because it can create challenging situations for Plan Commissioners to refrain from stating their opinions. Since site visits can be necessary, we recommend reminding Commissioners against discussion of the merits of the application at these meetings. Note that it is okay for staff or other people that are not part of the decision making body to comment on applications. Dane County planning staff can provide this service and can give an applicant information about the CUP process, as well as an opinion on whether a CUP application may be consistent with town plan policies.

Q: If the applicant is providing evidence to support their proposal, how does the Plan Commission get their evidence?

A: If a town feels that evidence provided by an applicant is insufficient to demonstrate compliance with the applicable standards of approval, then that may be sufficient grounds to deny an application. There are also various publicly available resources and information that can be referenced. Under the new zoning code, the county zoning committee has the ability to require outside consultation and require the applicant to pay for it. Towns could also establish this authority independently. Westport has a good form on their website. We will include that form in the packet of information posted from this meeting.

Q: How should we send out notice regarding CUPs?

A: Act 67 requires only a class 2 notice. It does not require mailings to neighboring property owners. We suggest that towns adopt a policy of mailing notifications. Dane County, and some towns, send notice to owners within 300 feet. For potentially controversially CUP applications, Dane County sends notice to owners within 1000(or sometimes more) feet. You can use the DCiMap website to generate labels for this mailing and you can charge the applicant for the costs associated with the mailing. For a tutorial on how to use the Mailing Label tool in DCiMap visit the Help website at <https://lio.countyofdane.com/Home/Help?dc=dcimap>. For a tutorial on how to use the Mailing Label tool in DCiMap visit our Help website at <https://lio.countyofdane.com/Home/Help?dc=dcimap>. Make sure you follow the “Search by selecting features from the map” option if you want to buffer around the

parcel boundaries. If you use the first row of tools by following the “Buffer from User-Drawn Graphics” option, the buffer will be drawn by whatever graphic you enter, not by the boundary of the parcel. Please contact Tim Confare at the Land Information Office (confare@countyofdane.com / 608-267-1598) if you have any questions.

Q: We now need “substantial evidence” to make CUP decisions. Do you have examples that we can refer to?

A: Substantial evidence is defined as, “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.” In most cases, the application materials either will or will not include the substantial evidence a town can reference in support of its decision.

Many CUP applications may be found non-controversial due to the fact that the uses have limited, if any, impacts and/or that those impacts can be easily mitigated with adequate operations and site planning and/or modest conditions of approval. If, after reviewing the application and holding the public hearing, a Town finds that the applicant has provided sufficient evidence to meet the ordinance standards, it could simply reference this in the findings. If a town is requiring conditions of approval, the findings can indicate that the conditions being imposed are designed to mitigate anticipated impacts that the town believes may result from the use and to ensure compliance with the applicable standards of the code.

For more significant or controversial CUP applications, towns should consider deferring any action until after the town public hearing and until after they’ve had a chance to review the county staff report for the petition. This can provide an opportunity to consider whether or not additional information may be required of the applicant, or if outside consultation may be needed to help determine if a proposal can meet the standards. Remember, the onus is on applicants to provide substantial evidence that their proposal meets the ordinance standards. Ultimately, towns should reference the zoning code standards when making a decision and findings in support of the decision.

Q: Why are so many conditional uses allowed in the zoning districts, especially the Farmland Preservation districts? Why not create a zoning category that encompasses the CUPs and make things easier for towns?

A: We did consider that. The Farmland Preservation districts, have to be approved by DATCP. Their requirements have to be followed, but that is something we can look at again.

Q: Does the county have model conditions? That would be helpful so that one town’s actions aren’t compared to another town and questioned.

A: Yes, the county ordinance includes a set of “standard” conditions that the town and county – at a minimum – must impose on any CUP. These can be found in section 10.101(7)(d) of the zoning code and are attached for reference. The ordinance also includes a listing of 10 [“other conditions”](#) that can be

tailored as needed by the town or county. County staff make an effort to modify conditions submitted by towns if needed for clarity or consistency. Didn't write down the answer to that one ...