

# CONDITIONAL USE PERMITS IN DANE COUNTY AFTER ORDINANCE AMENDMENT #23

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Presented by Renee Lauber, Executive Director DCTA

AND

Majid Allan, Senior Planner

Dane County Towns Association Meeting

April 3, 2025

Town of Cottage Grove

# OA #23 SUMMARY OF CHANGES

- Code revisions developed over 6 months with Ad Hoc CUP Work Group (DCTA and County Staff, Mar-Oct 2024)
- Brings county code into conformance with WI Act 67, which limits local government discretion over CUPs
- Towns are advisory to County ZLR Committee
- County ZLR Committee is required to act on all CUPs, and defend decisions if appealed to Circuit Court
- Towns have more flexibility: no longer required to hold formal public hearing, maintain a CUP record, defend denials in Circuit Court
- Less legal liability for Towns

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2  
3 2024 OA-23  
4 AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES,  
5 REGARDING THE REVIEW PROCESS FOR CONDITIONAL USE PERMITS  
6  
7 The County Board of Supervisors of the County of Dane does ordain as follows:  
8  
9 ARTICLE 1. Unless otherwise expressly stated herein, all references to section  
10 and chapter numbers are to those of the Dane County Code of Ordinances.  
11  
12 ARTICLE 2. Sections 10.101(7)(c) is amended to read as follows:  
13 (c) Review process.  
14 1. Hearing on application.  
15 a. Upon receipt of a complete and acceptable application, statement, site plan  
16 and operational plan, the zoning committee shall hold a public hearing on each  
17 application for conditional use. The zoning committee shall establish, by rule, a  
18 regular schedule and location for public hearings. The zoning committee may  
19 prescribe or amend rules for the conduct of the hearing and preserving a  
20 publicly-accessible recording of the proceedings.  
21 b. The Department of Planning Development will publish a Class 2 notice of  
22 each public hearing, as provided in Chapter 985 of the Wisconsin Statutes. The  
23 Department will also provide direct notice to the Town Clerk of any towns  
24 affected by the proposed conditional use. The zoning committee shall establish  
25 policies governing notice to other parties of interest.  
26 2. Town Board Action.  
27 a. The Department of Planning and Development shall provide direct notice to  
28 the town clerk of the town where a conditional use is proposed.  
29 b. The town board may, ~~at a properly-noticed public meeting, recommend that~~  
30 ~~the county zoning committee,~~ grant, grant with conditions or deny any application  
31 for conditional use.  
32 i. ~~Any town board recommendation on a conditional use permit shall be~~  
33 ~~communicate its position submitted,~~ in writing ~~on the conditional use application to~~  
34 ~~the county zoning committee~~ within sixty (60) days of the date of the county  
35 zoning committee public hearing.  
36 ii. The town board may request an extension of the review period of up to  
37 forty (40) days by submitting a written request to the zoning committee.  
38 ~~iii. The committee may grant a town board additional time to make a~~  
39 ~~recommendation if reasonably necessary to adjudicate the application.~~  
40 c. ~~Any town board recommendation prior to granting or denying on a~~  
41 ~~conditional use application, the town board shall make include written findings of~~  
42 ~~a factual, based on evidence for the recommendation presented and issue a~~  
43 ~~determination whether the proposed conditional use, with any recommended~~  
44 ~~conditions, meets all of the following standards:~~  
45 i. ~~General standards for approval of a conditional use under s. 10.101(7)(b);~~  
46 ii. ~~Any prescribed standards specific to the applicable zoning district;~~  
47 iii. ~~Any prescribed standards specific to the particular use under s. 10.103.~~  
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# OA #23 WHAT HAS NOT CHANGED

- Towns still review, act, and recommend conditions on CUPs
- ZLR still considers Town recommendation when making decisions (as much deference as legally possible)
- Towns and County still review CUPs by the “8 Standards” in s.10.102
- Consistency with comprehensive plan still required for CUPs (by ordinance, not statute)

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# IN PROGRESS: NEW RESOURCES

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- County staff is updating CUP materials to provide better guidance to Towns, applicants
- CUP Application Form
- Town Action Report website (will use Access Dane site)
- CUP Worksheet
- “Understanding the Conditional Use Process” Guide
- ZLR Committee Rules and Procedures (needs updates and clarifications)
- Documents will clarify how and when petitions may be modified / supplemented with new information (when requested, new information must update the “County petition” so Town and County reviewers have same materials)

# IN PROGRESS: NEW RESOURCES



## Understanding the Conditional Use Process

This document explains the process of applying for and obtaining a Conditional Use Permit ("CUP") in the rural unincorporated towns of Dane County that are under County zoning.

All lands in the County are assigned a zoning district. Each district allows specific land uses to occur on the property. Some land uses are listed as "permitted uses," meaning no special approval is needed to conduct the activity within the zoning district. Other land uses are listed as "conditional uses." Conditional uses may or may not be appropriate on a property, depending on the circumstances. Due to the potential for negative impacts to adjacent properties for uses already permitted there, conditional uses require special consideration and additional approvals by the Town and County.

- For instance, a school could be an amenity to a residential area; however, traffic and noise may have a negative impact on the neighborhood. Therefore, a school is listed as a conditional use. Through the review process, conditions may be placed on the school to mitigate anticipated concerns.

The Town and County review proposed conditional uses for compatibility with surrounding properties. As part of that review, certain standards must be met in order to grant a CUP (see below). The burden of proof is on the applicant to provide "substantial evidence" to demonstrate that the proposed land use can coexist in harmony with the neighborhood and meet all of the required standards. **A proposal may be denied if it fails to meet one or more of the standards or if the application does not address concerns.**

### How to Apply for a Conditional Use Permit (CUP)

Applicants are **strongly encouraged** to contact county staff to discuss the proposal before submitting an application. Below is a summary of the information that is required for any application. Staff will inform you if more information is needed based on the type of proposal or features of the property. Please note that additional information is required for [mineral extraction](#) or [communication towers](#).

### Required Application Information

1. A letter/statement explaining how the eight (8) standards of obtaining a CUP are being met. (See below)
2. **Narrative/Operations Plan:** Explain, in detail, the business or planned activity. Provide proposed hours of operation; anticipated number of employees and patrons; any outside activities or storage; and any noise, odors, or debris that may be created. Explain how storm water, trash, traffic, or hazardous materials will be handled.
3. **Site Plan:** A scaled map showing all existing and proposed buildings, driveways and parking areas, greenspace, detention basins, sanitary systems, outdoor storage areas, outdoor activity areas, refuse area, exterior lighting locations, proposed visual screening, and improvements to control traffic or vehicular movement.
4. **Legal Description:** A description of the property, or portion of the property, on which the conditional use will operate. This is typically prepared by a land surveyor.
5. **Neighborhood map:** A map showing existing zoning on surrounding lands with labeled existing land uses.
6. **Building plans:** If any buildings are proposed, provide an elevation drawing of the building exterior. An interior building layout/floor plan may be needed to describe indoor activities.
7. **Other information:** Specific studies may be needed to address committee or public concerns. Traffic, sound, groundwater, lighting, storm water, soils, or wetland studies may be needed to determine whether the land use is feasible in the location. Please consult with County Staff prior to conducting studies.

## Conditional Use Permit Worksheet

CUP # \_\_\_\_\_

| Standards and Concerns   |                         |                        |                        |
|--|-------------------------|------------------------|------------------------|
| <ol style="list-style-type: none"> <li>1. The proposal will not be detrimental to public health, safety, comfort, and general welfare.</li> <li>2. Neighboring properties will not be substantially impaired or impacted.</li> <li>3. The proposal will not interfere with the orderly development of the surrounding area.</li> <li>4. The proposal has demonstrated that necessary site improvements will be provided.</li> <li>5. The proposal has demonstrated that adequate road access and traffic control will be provided.</li> <li>6. The proposal meets other Town, County, and State requirements.</li> <li>7. The proposal meets the development policies found in the Town Comprehensive Plan.</li> <li>8. The proposal meets the standards of the Farmland Preservation Program, if applicable.</li> </ol> |                         |                        |                        |
| Is the proposal compatible with the neighborhood?  |                         |                        |                        |
| Hours of Operation   | Number of Employees     | Number of Patrons      | Outdoor activities     |
| Building size  | Building location       | Employee parking       | Patron/event parking   |
| Driveway design  | Traffic flow            | Road design            | Storm water management |
| Outdoor Storage  | Exterior lighting       | Noise/loudspeakers     | Odors                  |
| Sanitary facilities  | Water supply            | Hazardous materials    | Trash control          |
| Landscaping  | Screening for neighbors | Expiration date needed |                        |

| Testimony  |
|--|
| <ul style="list-style-type: none"> <li>○ Concerns raised:</li> </ul> |

## TOWN BOARD ACTION REPORT – CONDITIONAL USE PERMIT

Regarding Petition # \_\_\_\_\_ Dane County ZLR Committee Public Hearing \_\_\_\_\_

Whereas, the Town Board of the Town of \_\_\_\_\_ having considered said conditional use permit application, recommends to the Dane County Zoning and Land Regulation Committee that the conditional use permit application be:

- APPROVED  
 APPROVED WITH CONDITIONS  
 DENIED (FACTUAL BASIS REQUIRED)

TOWN BOARD VOTE: \_\_\_\_\_ In Favor \_\_\_\_\_ Opposed

**NOTE:** The Town's recommendation shall include reasoning for the recommendation. Please use the box below to explain the factual basis for the Town's recommendation. Use Page 2 of this form to list any recommended conditions.

| BASIS FOR RECOMMENDATION: |
|---------------------------|
|                           |

I, \_\_\_\_\_, as Town Clerk of the Town of \_\_\_\_\_, County of Dane, hereby certify that the above recommendation was made by the Town Board at the meeting on \_\_\_\_\_, 20\_\_\_\_.

Town Clerk \_\_\_\_\_ Date \_\_\_\_\_, 20\_\_\_\_.

# RECOMMENDED “DO’S AND DON’TS” FOR TOWNS

| ISSUE                  | DO   | DON'T  |
|------------------------|--|--|
| Application materials  | Use <u>only</u> the county’s CUP application   | Require a separate CUP application (ok to charge fee, other minor procedural requirements)                               |
| Additional information | Notify county staff if additional information is needed (or received) from applicant | Make unreasonable requests for information (e.g., traffic study for limited family business)                             |
| Reviewing CUPs         | Consider application and testimony/evidence against required standards of approval   | Make determinations about a CUP proposal prior to reviewing the application materials and considering testimony/evidence |

# RECOMMENDED “DO’S AND DON’TS” FOR TOWNS

| ISSUE                  | DO   | DON'T   |
|------------------------|--|---|
| Conditions of approval | Request county staff review potential “unusual” or complicated conditions of approval to ensure they are enforceable   | Require conditions that are unrelated to the standards for approval                 |
| Decision making        | Provide a brief, written summary of the town’s rationale for making its recommendation to approve, approve with conditions, or deny a CUP (ordinance requires “factual basis”) | Submit a town action report with no written statement supporting its recommendation |

# HELPFUL LINKS

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- Chapter 10 Zoning Code (1 and 2-column format + zoning district fact sheets):
  - <https://www.danecountyplanning.com/Zoning/Zoning-District-Fact-Sheets>
- “Understanding the CUP Process” guide:
  - <https://danecountyplanning.com/documents/pdf/Zoning-Information/Understanding-Conditional-Use-Process.pdf>
- CUP Application Form and checklist:
  - <https://danecountyplanning.com/documents/pdf/Zoning-Forms/Dane-County-CUP-Application.pdf>
- CUP Process flowchart:
  - <https://danecountyplanning.com/documents/CUP/CUP-Flowchart.pdf>
- ZLR info page:
  - <https://danecountyplanning.com/Zoning/ZLR>
- ZLR Committee adopted rules and procedures:
  - <https://danecountyplanning.com/documents/pdf/ZLR-Information/ZLR-Rules-and-Procedures.pdf>

# COMP PLAN OPTIONS TO ADDRESS CUPS

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- Many town plans have “siting requirements” for CUPs, matching the requirements for general development proposals.
- Some town plans list a subset of “appropriate” zoning districts to implement the plan’s goals/objectives/policies for specific planning areas (e.g., ag preservation, commercial, etc.)
- Some town plans list the 8 standards used by County, and indicate these are considered by the town as well.
- Many town plans don’t (currently) address CUPs.
- Some towns address CUPs in other ways, as highlighted on the next slides.

# COMP PLAN OPTIONS TO ADDRESS CUPS

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- Town of Dunn

- Subcommittee of the Plan Commission looked at all the CUPs in the new County Zoning Ordinance
- Made a list of Conditional Uses that could be “reasonably consistent” with the Comp Plan, “*based upon their nature and well-known or anticipated impacts*”.
  - Incorporating the Dunn language is not a means to ensure that there will never be certain CUPs in a township.
  - All CUP applications still need to be judged on their own merits, even if they are not on a town’s CUP “list”.
- Created possible conditions for CUPs based on distance to neighbors and indoor vs outdoor use.
  - Hours of operation, # of employees, lighting, noise, trash, parking, # of events, signs, visual screening, stormwater, storage, dust, odors.
- Dunn doesn’t support rezones to RM (Rural Mixed Use) districts due to the possibility for more “intense” CUPs. Instead, Dunn only allows rezones to RR (Rural Residential) districts.

## 2.12 Requirements for Conditional Use Permit Requests

The Town will review conditional uses in each district to determine if all provisions of the Land Use Plan and the Future Land Use Map are addressed and met including, but not limited to consideration of the following factors:

- a. Consistency with the Town Comprehensive Plan
- b. Whether the use is complementary with adjoining properties.
- c. Compatibility with existing or permitted use on adjacent lands.
- d. Impacts of noise, dust, lights, odor, contamination, parking, traffic, and other changes related to the use on public safety and rural character of the Town
- e. The productivity of the lands involved.
- f. The location of the proposed use so as to reduce to a minimum the amount of productive agricultural land converted.
- g. The need for public services created by the proposed use.
- h. The availability of adequate public services and the ability of affected local units of government to provide them without an unreasonable burden.
- i. The effect of the proposed use on water or air pollution, soil erosion and rare or irreplaceable natural resources.

The Town has reviewed the conditional uses listed in the Dane County zoning ordinance in light of the goals, objectives, and policies found in this plan. The conditional uses listed below represent those that, based upon their nature and well-known or anticipated impacts, the Town believes could be reasonably consistent with this plan. All applications will be evaluated to determine compliance with the standards detailed in Dane County Ordinance 10.255(2)(h). A site plan per section 2.3 and/or 2.5 will be required.

### SFR-2 Single-Family Residential, 2 to 4 acres Zoning District

- Attached accessory dwelling units
- Day care centers
- Governmental uses
- Institutional uses
- Religious uses
- Nonprofit community uses
- Transient or tourist lodging
- Transportation, utility, communications, pipeline, electric transmission, utility, or drainage uses

### TFR-08 Two-Family Residential Zoning District

- Governmental uses
- Religious uses
- Transportation, utility, communications, pipeline, electric transmission, utility, or drainage uses

### MFR-08 Multi-Family Residential Zoning District

- Governmental uses
- Religious uses
- Transportation, utility, communications, pipeline, electric transmission, utility, or drainage uses

### LC Limited Commercial Zoning District

- Contractor, landscaping or building trade operations
- Incidental parking for employees
- Indoor storage and repair
- Incidental indoor maintenance
- Utility services associated with a permitted use
- Undeveloped natural resource and open space areas
- Agricultural and agricultural accessory uses (livestock not permitted)
- Transportation, utility or communication use required by law

### Conditional Use Permit Conditions

The following conditions may be required for any Conditional Use Permit approval based on the intensity of the proposed use. Any, or all of these conditions may be considered by the Town. This list is not exhaustive and additional conditions may be placed on any Conditional Use Permit. Additionally, conditions for Conditional Use Permits within 500 feet of a neighboring residence may be applied to Conditional Use Permits that are more than 500 feet from a neighboring residence.

|   | Conditional Use Permit limited to Indoors   |   | Conditional Use Permit Includes Outdoor Use   |   |
|---|---|---|---|---|
|   | <i>Within 500 feet of a neighboring residence</i>   | <i>More than 500 feet from a neighboring residence</i>  | <i>Within 500 feet of a neighboring residence</i>   | <i>More than 500 feet from a neighboring residence</i>  |
| <b>Hours of Operation for non-agricultural entertainment CUPs</b> | 7 am to 7 pm  | 6 am to 10 pm   | Outdoor use limited to 8 am to 7 pm   | 6 am to 10 pm   |
| <b>Hours of Operation for agricultural entertainment CUPs</b>     | 7 am to 9 pm, or dusk, whichever is later   | 6 am to 10 pm   | Outdoor use limited to 7 am to 9 pm, or dusk, whichever is later  | 6 am to 10 pm   |
| <b>Number of Employees</b>  | Shall not exceed 3 full, or part time, employees  | Shall not exceed 6 full, or part time, employees  | Shall not exceed 3 full, or part time, employees  | Shall not exceed 6 full, or part time, employees  |
| <b>Outdoor lighting</b>   | External lighting shall be restricted to safety lights at the entrance and exits of buildings. Lighting must be dark skies compliant and no light shall spill over neighboring property line.         | Lighting must be dark skies compliant and no light shall spill over neighboring property line.  | External lighting shall be restricted to safety lights at the entrance and exits of buildings. Lighting must be dark skies compliant and no light shall spill over neighboring property line.   | Lighting must be dark skies compliant and no light shall spill over neighboring property line.  |
| <b>Noise</b>  | Limited to 60 dBA measured at the property line. For a period of a total of 10 minutes per day, decibel levels may reach 100 dBA between 9 am to 5 pm. Outdoor loudspeakers or radios are prohibited. | Limited to 60 dBA measured at the property line. For a period of a total of 10 minutes per day, decibel levels may reach 100 dBA between 9 am to 5 pm. Outdoor loudspeakers are prohibited. | Between 7 pm and 7 am, limited to 40 dBA measured at the property line. Between 7 am and 7 pm, limited to 60 dBA measured at the property line. For a period of a total of 10 minutes per day, decibel levels may reach 100 dBA between 9 am to 5 pm. | Between 7 pm and 7 am, limited to 40 dBA measured at the property line. Between 7 am and 7 pm, limited to 60 dBA measured at the property line. For a period of a total of 10 minutes per day, decibel levels may reach 100 dBA between 9 am to 5 pm. |

# COMP PLAN OPTIONS TO ADDRESS CUPS

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- Town of Cross Plains

- Specific CUPs are not allowed in certain areas of the town.
- The identified areas are characterized by years significant public investment to both acquire and rehabilitate natural resources. The town has other policies to promote continued protection/preservation, and determined that allowing certain conditional uses in these areas would be inappropriate.

In areas located in:

- Town of Cross Plains voluntary conservation areas;
- in boundaries identified by governmental entities for potential public acquisition or open space or;
- areas identified in this plan as TDR Super Sending Areas

conditional use permits for the following uses are not permitted:

- Transportation, communication, pipeline, electric transmission, utility, or drainage uses not required by law
- Non-metallic mineral extraction
- Asphalt & ready-mix concrete plants
- Renewable energy electricity generators

Such uses would impair or diminish the aesthetics, values, uses and enjoyment of properties with significant public investment, unique geological features and nationally-recognized watersheds.

# COMP PLAN OPTIONS TO ADDRESS CUPS

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- Town of Primrose
  - Policies for certain CUPs (renewable energy facility aka solar fields, in this case)

The town will apply the following policies to Conditional Use Permits for renewable energy facilities, and will encourage the Public Service Commission to follow these policies when issuing orders within the Town of Primrose:

1. Policies

- a. Minimize need for new electrical transmission lines; locate new renewable energy installations as close as possible to existing transmission facilities.
- b. Manage utility-scale installations density and size to minimize impacts to adjoining agricultural and rural character.
- c. Except where required for aviation or other safety concerns, encourage setbacks, vegetative screening, berms, or other practices to minimize visual impact.

# SHOULD THE ZONING CODE HAVE FEWER CUPS?

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- Conditional Uses are decided by a quasi-judicial process:
  - If proposal meets specified standards for approval, CUP must be granted; if it doesn't, it must be denied.
- Rezones (zoning “map amendments”) are a legislative action:
  - Local governments have wide discretion to make decisions on rezones. If a town denies a rezoning, the county cannot over-rule.
- After Act 67 established statutory requirements for CUPs, Wisconsin Towns Association legal counsel advised towns to critically evaluate their CUP ordinances: *"Local governments should look at every district and decide if it truly wants conditional uses allowed in those zones."*

# SHOULD THE ZONING CODE HAVE FEWER CUPS?

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- **PRO:** Limiting the number of conditional uses means more land use proposals would require a rezone, resulting in towns having more discretion.
- **CON:** Once a zoning change is granted, properties likely to remain in assigned zoning category indefinitely, whereas CUPs can be set to expire.
- Should DCTA establish a working group to review the zoning ordinance and evaluate conditional uses in all zoning categories?

# QUESTIONS???

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More information and resources available at: [www.danecountyplanning.com](http://www.danecountyplanning.com)

# THANK YOU!

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More Questions?

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