

## SECTION 5. CONDITIONAL USE PERMITS

### 5.1 General Provisions

Any use listed as a conditional use in this Ordinance shall be permitted only upon application in duplicate to the Zoning Officer and issuance of a Conditional Use Permit by the Planning & Zoning Committee or by the Town Board, if required by this Ordinance. A Conditional Use Permit shall be issued only upon satisfaction of the requirements listed herein, in addition to all other requirements of this Ordinance. All such uses are hereby declared to possess such unique and special characteristics that each specific use shall be considered as an individual case.

### 5.2 Required Information

In order to secure evidence upon which to base its determination, the Planning & Zoning Committee and/or the Town Board may require the submission of plans of buildings, arrangement of operations, plat of grounds showing location of buildings, stockpiles, equipment storage, fences or screens, specification of operations, parking areas, traffic access, open spaces, landscaping and any other pertinent information that may be necessary to determine if the proposed use meets the requirements of the Ordinance.

### 5.3 Standards Applicable to All Conditional Uses

(1) In passing upon a Conditional Use Permit application, the Planning & Zoning Committee and/or Town Board shall consider the following factors:

- (A) The location, nature, and size of the proposed use.
- (B) The size of the site in relation to it.
- (C) The location of the site with respect to existing or future roads giving access to it.
- (D) Its compatibility with existing uses on land adjacent thereto.
- (E) Its harmony with the future development of the district.
- (F) Existing topography, drainage, soils types, and vegetative cover.
- (G) Its relationship to the public interest, the purpose and intent of this Ordinance and substantial justice to all parties concerned.
- (H) The potential release of offensive, obnoxious, or unhealthful odors and pollutants. When considering what constitutes an offensive, obnoxious, or unhealthful odor and/or pollutant, the Planning and Zoning Committee or the Town Board may consider the duration and intensity of the odor or pollutant and the proximity of residential and/or business dwellings, and may require provisions for monitoring and/or measurement of odors or pollutants by olfactometer or other means. The Committee or the Board may

make reference to Section NR 429.03 of the Wisconsin Administrative Code or any other standards it may deem to be reasonable.

Standards Applicable To Conditional Uses in the A-FP and A-1 Districts

(2) In passing upon a Conditional Use Permit Application in the A-FP District, the Town Board shall also determine that the requested use satisfies all of the conditional use permit criteria contained in the A-FP District relating to the requested use.

(3) In passing upon a Conditional Use Permit Application in the A-FP District and the A-1 District, the Town Board and/or Planning and Zoning Committee shall also consider the following factors:

(A) The potential for conflict with agricultural use.

(B) The need of the proposed use for a location in an agricultural area.

(C) The availability of alternative locations.

(D) Compatibility with existing or permitted uses on adjacent lands.

(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 quality, soil erosion, and rare or irreplaceable natural resources.

(J) The potential release of offensive, obnoxious, or unhealthful odors.

5.4 Conditions Attached to Conditional Use Permit

(1) Upon consideration of the factors listed above, the Town Board or Planning & Zoning Committee may attach such conditions, in addition to those otherwise specifically listed, that it deems, based upon substantial evidence, to reasonably relate to the purpose of this Ordinance and, to the extent practicable, measurable. As used herein, “substantial evidence” means 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. Violation of any of these conditions shall be deemed a violation of this Ordinance.

(2) Conditional Use Permits are revocable by majority vote of the Planning & Zoning Committee if the conditional use is not actively utilized for a period of one (1) year, conditions of approval are not being met, or the conditional use is expanded without the Planning & Zoning Committee's approval. Subject to the provisions of Section 5.7(11) below, in the event the Conditional Use Permit is not actively utilized for a period of two (2) years after the date of issuance, the Conditional Use Permit shall automatically be revoked upon the expiration of said two (2) year period.

(3) The Town may impose conditions relating to a Permit's duration, transfer, and/or renewal.

*(Amended by Ordinance No. 2018-03)*

#### 5.5 Notice and Public Hearing

Before issuing a Conditional Use Permit, the Planning & Zoning Committee (following a public hearing before and receipt of a recommendation from the Planning & Zoning Committee) shall hold a public hearing. Notice of such public hearing specifying the time, place, and matters to come before the Town Board and/or the Planning & Zoning Committee shall be given as a Class 2 notice as referred to in Chapter 985 of the Wisconsin Statutes. *(Amended by Ordinance No. 2018-03)*

#### 5.6 Conditional Use Permit Fee

The applicant, upon filing of his application, shall pay a fee to the Zoning Officer in accordance with the following schedule:

(1) Conditional Use Fee equal to the greater of (1) \$350 or such other amount as shall hereafter be determined by Town Board resolution, or (2) the cost of public notice and other associated fees.

#### 5.7 Conditional Use Permit Procedure for Livestock Facilities

(1) Approval required

These procedures apply to livestock facilities that may require a Conditional Use Permit under this Ordinance.

(2) Permits for Existing Livestock Facilities

(A) A permit is required for the expansion of a pre-existing or previously approved livestock facility if the number of animal units kept at the expanded livestock facility will exceed all of the following:

(i) The applicable size threshold for a Conditional Use Permit established in the zoning district where the facility is located.

(ii) The maximum number previously approved or, if no maximum number was previously approved, a number that is 20% higher than the number kept on May 1, 2006, or on the effective date of the permit requirement, whichever date is later.

(B) A permit is not required for a livestock facility that existed before May 1, 2006, or before the effective date of the permit requirement in this Ordinance (except as provided in subparagraph (A)).

(C) A permit is not required for a livestock facility that was previously issued a Conditional Use Permit or other local approval (except as provided in subparagraph (A)). A prior approval for the construction of a livestock facility implies approval for the maximum number of animal units that the approved livestock facility was reasonably designed to house, except as otherwise clearly provided in the approval. Prior approval of a single livestock structure, such as a waste storage structure, does not constitute prior approval of an entire livestock facility.

### (3) Application Procedure

A livestock operator must complete the application and worksheets prescribed by ATCP 51, including any authorized local modifications. The application requirements specified in ATCP 51, Wisconsin Administrative Code, are incorporated by reference, without reproducing them in full. The application form and worksheets establish compliance with the standards in ATCP 51 and this Ordinance.

This operator must file 4 duplicate copies of the application form, including worksheets, maps and documents (other than engineering design specifications) included in the application.

### (4) Application Fee

A non-refundable application fee of \$1,000 shall accompany an application.

### (5) Application Review Procedure

(A) Within 45 days after the Town Board or the Planning & Zoning Committee receives an application, it shall notify the applicant whether the application is complete. If the application is not complete, the notice shall describe the additional information needed. Within 14 days after the applicant provides all of the required information, the Town Board or the Planning & Zoning Committee shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

(B) Within 14 days after the Town Board or the Planning & Zoning Committee notifies an applicant that the application is complete, the Town Board or the Planning & Zoning Committee shall notify adjacent landowners of the application. The Town Board or the Planning & Zoning Committee shall use the approved notice form in ATCP 51, and mail a written notice to each adjacent landowner.

(C) The Town Board or the Planning & Zoning Committee shall grant or deny an application within 90 days after the notice of a complete application is provided as required by subparagraph (A) above. The Town Board or the Planning & Zoning Committee may extend this time limit for good cause, including any of the following:

(i) The Town Board or the Planning & Zoning Committee needs additional information to act on the application.

(ii) The applicant materially modifies the application or agrees to an extension.

The Town Board or the Planning & Zoning Committee shall give written notice of any extension. The notice shall specify the reason for the extension, and the extended deadline date by which the Town Board or the Planning & Zoning Committee will act on the application.

#### (6) Public Hearing

The Town Board (following a public hearing before and receipt of the recommendation of the Planning & Zoning Committee) or the Planning & Zoning Committee shall schedule a public hearing on the application within 90 days after issuing notice of a complete application.

#### (7) Standards

The standards for issuing a permit are as follows:

(A) The state livestock facility siting standards adopted under ATCP 51, Wisconsin Administrative Code. These standards are incorporated by reference, without reproducing them in full.

(B) Setbacks authorized by this ordinance.

#### (8) Criteria for Issuance of a Permit

(A) A permit shall be issued if the application for the proposed livestock facility contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets the standards specified in this Ordinance.

(B) A permit may be denied if any of the following apply:

(i) The application, on its face, fails to meet the standards for approval.

(ii) The Town Board or the Planning & Zoning Committee finds, based on other clear and convincing information in the record, that the proposed livestock facility does not comply with applicable standards in this Ordinance.

(iii) Other grounds authorized by § 93.90, Stats., that warrant disapproving the proposed livestock facility.

(C) No conditions may be imposed on the permit other than the standards provided in this Ordinance.

(9) Record of Decision

(A) The Town Board or the Planning & Zoning Committee shall issue its decision in writing. Its decision shall be based on written findings of fact supported by evidence in the record.

(B) In the event that a permit is approved, the applicant shall receive a duplicate copy of the approved application, marked “approved.” The duplicate copy must include worksheets, maps and other documents (other than engineering specifications) included in the application.

(10) Notice to the Department of Agriculture, Trade and Consumer Protection

The town clerk as required by ATCP 51.36, Wisconsin Administrative Code, within 30 days of the Town Board’s or Planning & Zoning Committee’s decision on the application shall do all of the following:

(A) Give the Department of Agriculture, Trade and Consumer Protection written notice of the decision.

(B) File with the Department a copy of the final application granted or denied, if the Town Board or the Planning & Zoning Committee has granted or denied an application under this Ordinance. (The copy shall include all of the worksheets, maps and other attachments included in the application, except that it is not required to include the engineering design specifications.)

(C) If the Town Board or the Planning & Zoning Committee has withdrawn a local approval under this Ordinance, file with the Department a copy of the final notice or order withdrawing the local approval.

(11) Expiration of Permit

A permit remains in effect regardless of the amount of time that elapses before the livestock operator exercises the authority granted under the permit, and regardless of whether the livestock operator exercises the full authority granted by the approval. However, the Town Board or the Planning & Zoning Committee may treat a permit as lapsed and withdraw the permit if the permit holder fails to do all of the following within 2 years after issuance of the permit:

- Begin populating the new or expanded livestock facility.

- Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the permit application.

#### (12) Permit Modifications

The operator may make reasonable changes that maintain compliance with the standards in this Ordinance, and the Town Board or the Planning & Zoning Committee shall not withhold authorization for those changes.

#### (13) Compliance Monitoring

The Town Board or the Planning & Zoning Committee shall monitor compliance with the Ordinance as follows:

(A) Upon notice to the livestock facility owner request the right of Zoning Officer to personally view the permitted facility at a reasonable time and date to insure that all commitments of the application as approved are being complied with.

(B) If the livestock facility owner refuses Zoning Officer the right to view the permitted facility, the Zoning Officer may request the assistance of the Sheriff or a deputy Sheriff to obtain an inspection warrant from the circuit court to inspect the permitted facility for the purpose of protection of the public health and safety under Sec. 66.0119 of Wis. Statutes.

(C) If a permitted facility is found not to be in compliance with the commitments made in the approved application, the Zoning Officer shall issue a written notice to the livestock facility owner stating the conditions of non-compliance and directing that compliance of the commitments of the approved application be complied with in a reasonable amount of time stated in such written notice.

(D) If non-compliance of the permit conditions as described in the written notice given by the Zoning Officer continue past the stated reasonable time to comply, the Zoning Officer may take further action as provided in this Ordinance, including but not limited to issuance of a citation or seeking of injunctive relief.

(E) If the livestock facility owner disputes that the conditions of the permit have not been complied with, the livestock facility owner may request a hearing in writing within five days of receipt of the notice of non-compliance. The Town Board or the Planning & Zoning Committee shall schedule a hearing within five days to determine if the conditions of the permit have been complied with or whether non-compliance of the commitments of the approved application and local approval exists.

#### (14) Terms of the Permit

A permit and the privileges granted by a permit issued under this Ordinance is conditioned on the livestock operator's compliance with the standards in this Ordinance, and with commitments made in the application for a permit. The Town Board or the Planning &

Zoning Committee is authorized to suspend a permit or seek other redress provided in this Ordinance for non-compliance.

(15) Transferability

A permit and the privileges granted by the permit run with the land, and remain in effect, despite a change in ownership of the livestock facility, as long as the new operator does not violate the terms of the local approval. An applicant may record with the register of deeds, at the applicant's expense, the duplicate copy of the approved application.

Upon change of ownership of the livestock facility, the new owner of the facility shall file information with the town clerk providing pertinent information, including but not limited to such information as the name and address of the new owner and date of transfer of ownership.