



Planning & Zoning Commission Meeting/Work Session
Held Jointly with the Town Board
June 17, 2021
Approved Minutes

Chairman Malek called the meeting to order at 6:00 P.M. and led the Pledge of Allegiance.

Present: Chairman Malek; Supervisors Suhm, and West. Commissioners Kwiatkowski, Lewis, and Roberts were present. Supervisor Mommaerts, Supervisor Schneider, and Commissioner Mann were excused. Staff present: Town Planner Schwecke, Town Attorney Macy, and Town Clerk Pepper. Also, present: Laura Clemons, Ryan Hajewski, Wendy Konichek, and Steve Muth.

Proposed revisions to the Town's zoning regulations (Chapter 500) (application 2021-06) – Town Planner Schwecke explained a proposed ordinance was put forth and the Planning & Zoning Commissioner passed a motion to recommend approval of the draft ordinance. A public hearing was held over a period of two (2) meetings and was subsequently closed. Tonight's meeting is to review what changes, if any, the boards want to make. Included in the board packet is the summary of comments, which are not verbatim, page six (6) are the comments from Commissioner Lewis, the approved minutes of March 24th, 2021, and March 31, 2021, and copies of the written comments that were received. The next step is for the boards to decide what changes they want to make, or not. The only changes that the boards can consider tonight are limited to those changes that were addressed in the draft ordinance. In other words, if the comments do not relate to what was proposed, you cannot act on it because people were not notified of the potential change.

Town Attorney John Macy gave an example and said hypothetically, if one of the recommendations from public comment was for the Town to consider changing density in the R3 district from three (3) to two (2) acres, and the Town made that change, it would be totally unfair to the rest of the residents in the municipality because they did not know this change could happen. Making changes to things that were not addressed in the draft could become a legal issue. Instead, rather than making changes now, the boards should ask themselves if this idea, or recommendation should be something to be put on a list to be considered later, or to not be considered at all.

Commissioner Lewis explained that the Town received numerous comments and suggestions regarding agri-tourism either as conditional uses or by right. She asked if some agri-tourism uses that were meant to be in the proposed draft could be addressed tonight or not. Attorney Macy replied that if something is currently a conditional use (CU) and the public wants it changed to "by right", it should not be addressed without it having been proposed as part of the draft because that is too drastic. The same thing goes if they ask for agri-tourism to be extended to other districts rather than the only district it is currently permitted in now. All those people who live in those extended districts would not have been afforded the opportunity to speak on the matter.

Attorney Macy recommended that when the boards come to a comment or suggestion that was not addressed in the draft, the Chairman should ask if this should be on the list for the next review session. Commissioner Lewis asked if another draft would have to be finalized and another public hearing would have to be held if the boards want to consider making any changes to the draft tonight. Attorney Macy cautioned the boards stating that if you consider making changes tonight, this process may never finish.

Commissioner Kwiatkowski explained that a workgroup was formed for the purpose of working on land uses. This was driven by the conditional use change by the state. The subcommittee looked at and reviewed land uses, not zoning classifications of the land. Planner Schwecke agreed, stating that the primary focus was on the land use matrix and development standards. No zoning districts were created or modified. Commissioner Lewis pointed out that the proposal to split zoning districts would not be part of this review because it was not addressed in this draft. It could however be considered at a later time.

Supervisor West stated that the Plan Commission and Town Board has put in an extensive amount of time working on the proposed zoning code amendments. Following that, the Town received input from the public on the draft. Some points of view from the public are going to take a lot of time to review and study. Everyone needs to keep in mind that these documents are all living documents, so passing a code as it stands now does not mean that it cannot be changed. It is a work in progress. The Town needs to approve this draft so we can have regulations in place and then we can go forward from there.

Chairman Malek explained that the land use review process has been going on for well over two (2) years. Mukwonago reviewed theirs in six (6) months. Attorney Macy clarified that Mukwonago did the conditional use portion in six (6) months. The actual whole zoning code rewrite took them five (5) years. Sussex was done in two (2) years. As far as the League of Wisconsin Municipalities position on Act 67, Attorney Macy stated that he understands their position. Madison took the position is that if you came in with a reasonable conditional use request, you had a reasonable right to have it. That is one of the only communities who believed that. Attorney Macy gave examples of instances where conditional uses could have been denied because under the old law, you did not have a right to a CU. You could say no as long as you did not violate their constitutional rights. Under the new law, as long as they meet certain requirements, the conditional use would have to be approved. Attorney Macy explained that the article published by the League is extremely misleading. The way the law is written is that if someone comes in with a request for a conditional use and he or she provides substantial evidence that he or she meets or agrees to meet all the required conditions, the municipality cannot deny the request. If a municipality can present substantial evidence on why a condition should be added to the conditional use, then the condition can be added. Neighbors' objecting would have to provide substantial evidence to the contrary. He explained that in every municipal zoning code that had airports listed as a conditional use, none of them had requirements or conditions listed. If this is not fixed, the municipality is going to have a lot of airports because now under the new law, you cannot say no. Commissioner Lewis stated that she just wanted to confirm that putting conditional uses back into the code, with carefully thought-out sets of conditions was the correct process that the Town followed.

Planner Schwecke referred to the compilation of public's comments (attached) and explained that he pulled out what the person was requesting. In some instances, he added staff comments, but only by way of background and to provide context. What the boards need to do is decide if the suggestion is a good suggestion and if so, is the suggestion addressed in the draft? If yes, do they want to address it now? If not, it can be addressed later. If it is not a good suggestion, you can decide not to consider it. Planner Schwecke pointed out that when he created the ordinance, he included sections of the zoning ordinance to provide context. Not everything that is included in Exhibit 1 has any relevant changes. Someone suggested adding "flooding" to Section 500.05 of the code. Section 500.05 is in that exhibit and there are no proposed changes to it so the boards need to decide if it is a good idea to talk about later or if it should not be considered. Planner Schwecke explained that whenever a provision in the code that relates back to

State Statutes, he tries to include the source of that information. In this instance, the section heading is purpose. There is a section in State Statutes relating to giving municipalities the right to adopt zoning ordinances for the following purposes. Planner Schwecke said he copied and pasted, in large part, that section to the code. As it turns out, the drafters of the legislation did not include flooding in their list. Attorney Macy stated that their legal guidance is to follow state law. Flooding is not listed in state law. Planner Schwecke stated that the same thing happens with the suggestion to changing Section 500.07. This section was not addressed or amended as part of the proposed code ordinance and cannot be addressed tonight.

At this time, the Plan Commission and Town Board went through the list of suggestions one by one (see attachment titled “Proposed Zoning Code Amendment Specific Recommendations Relating to Ordinance 2021-03”, dated June 8, 2021) and by a consensus, decided whether the suggestion could be considered now, considered later or, for various reasons, including beyond the scope of zoning and including legal reasons, it would not be considered at all. Below are their decisions by consensus for each number and section:

Number/Section	Decision
1. 500.05(B)(1)	Not
2. 500.07	Later
3. 500.07(B) & (C)	Not
4. 500.41(A)(15)	Later
5. 500.41	Later
6. 500.41(144)	Not
7. 500.41(147)	Not
8. 500.52(B), 500.72(C), 500.104	Not
9. 500.52(H)	Typo
10. 500.78 & 500.141	Not
11. 500.104	Not
12. 500.106	Not
13. 500.112	Later
14. 500.113	Not
15. 500.124	Not
16. 500.132	Not
17. 500.133	Not
18. 500.167	Put in book
19. 500.516	Not
20. 500.522	Later
21. 500.232	Remove “generally”
22. Article 6 -multiple Sections	Later
23. 500.482	Not
24. 500.566(D)	Not
25. 500.567(C)	Not

26. 500.604(B)	Later
27. Parking	Later
28. Snow	Not
29. Shared Driveway	Not
30. Commercial Vehicles	Not
31. Nonconforming use section (#7)	Later
32. Conditional use violations	Not
33. Application fees	Not
34. Land Use Matrix	Later
35. Appendix B	Later

A motion was made by Commissioner Kwiatkowski, seconded by Commissioner Roberts to recommend to the Town Board approval of the ordinance as drafted, subject to the minor modifications and the changes in the staff report. Upon voice vote, motion carried 5-0.

A motion was made by Commissioner Lewis, seconded by Commissioner Kwiatkowski to direct the Town Planner to accumulate the list of future considerations, to direct the Town Chairman to appoint a sub-committee to review that list and make recommendations to the Planning & Zoning Commission and Town Board. Upon voice vote, motion carried 5-0.

A motion was made by Supervisor West, seconded by Commissioner Roberts to adjourn the meeting/work session at 9:15 P.M.

Lynn M. Pepper, Eagle Town Clerk

Proposed Zoning Code Amendment
Specific Recommendations Relating to Ordinance 2021-03
- June 8, 2021-

Below is a list of specific recommendations made by the public at the public hearing conducted on March 24 and 31, 2021. The recommendations are organized based on where the subject matter appears in the zoning code. In other words, the recommendations are not organized by speaker. Further, the descriptions are not a verbatim recitation, but a summary statement. In some instances, a staff response is included by way of background information.

When reviewing this list, it is recommended that the corresponding code section be ready to review alongside the recommendation.

In addition to this summary, meeting minutes have been prepared and are available. Written comments that were submitted prior to the close of the public hearing are also available. Commissioner Lewis has submitted additional comments for consideration and are included on the last page.

1. Sec. 500.05(B)(1)

Reference should also include "flooding"

2. Sec. 500.07

Add subsection (D) to read generally as follows "Nothing in this ordinance shall apply to water control structures and dams regulated by the DNR under Chapter 31."

Staff comment: The code currently regulates dams as set forth in Appendix A and B (3.01). As I understand it, the DNR regulates dams with regard to construction, maintenance, and the like. There is not a process for consulting the jurisdiction where a new dam would be located. There needs to be a consideration of effects of a new dam on surrounding land uses.

3. Sec. 500.07 (B) and (C)

The reference to "in good faith" is too vague.

4. Sec. 500.41(A) (15)

Does the definition for antennae include amateur radio towers because they can be large and unsightly?

Staff comment: This definition is needed for the regulations relating to telecommunications. Amateur radio antennas are regulated as set forth in Appendix A and B (18.04)

5. **Sec. 500.41**

Add a definition for dam “any artificial structure across a watercourse which has the primary purpose of impounding or diverting water and includes all pertinent works such as a dike, canal, or powerhouse”

Staff comment: This definition would presumably only be needed if the Town wants to exempt dams as suggested in s. 500.07.

6. **Sec. 500.41 (144)**

Revise to include “reservoir” as follows ...navigable body of water, reservoir, or other public way...

Staff comment: By definition, a navigable body of water would include a reservoir.

7. **Sec. 500.41 (147)**

Revise to include “reservoir” in the second sentence as follows ... or to other places on the shore of a lake, reservoir, or flowage ...

Staff comment: The definition mirrors state statutes. The preference is to not deviate from that precedent. The definition as described include reservoirs.

8. **Sec. 500.52(B), 500.72(C); 500.104**

These parts seem to contradict.

9. **Sec. 500.52(H)**

Insert “shall”. The Plan Commission shall act on

10. **Sec. 500.78 and 500.141**

Meeting minutes should be posted to the Town’s website within 10 days of the meeting.

Staff comment: The Town Clerk is responsible for drafting all meeting minutes along with all other prescribed duties. The 10-day rule would be difficult to accomplish; and if not met would be a source of conflict. All meeting minutes are not official until approved by the governing body. Draft minutes are sent to the Plan Commission/Town Board for their review and included in the materials for the meeting. It is the practice to post all approved minutes on the Town’s website as soon as is practical.

11. **Sec. 500.104**

- There should be no need to enter a property to review an application. That provision should be removed.
- It makes sense to review a property if an application has been submitted.

12. **Sec. 500.106**

It should be okay to determine if a property is in violation.

13. Sec. 500.112

This section should be revised "to clearly indicate that only written and published statements and recommendations of record are binding on both parties and that oral representations may be ignored."

Staff comment: This provision states that the decision-making authority of the Plan Commission/Town Board is not limited in some way because of comments made by staff or anyone else.

14. Sec. 500.113

Speaker asked if any money left in an escrow is returned to the applicant.

Staff comment: Any balance left in an escrow is returned.

15. Sec. 500.124

This section indicates the Town pays for any notice. The speaker believes applicants should pay.

Staff comment: The Town Board establishes application fees which is intended to cover the cost of providing such notice. If changes are deemed necessary, the Town Board can amend the fee schedule by resolution at any Town Board meeting.

16. Sec. 500.132

The applicant should have the ability to say if a Plan Commission member or a Town Board member has a conflict of interest.

Staff comment: The Town Attorney will respond to this suggestion.

17. Sec. 500.133

If meeting is continued, the minutes should be made available (it would be like a public notice).

18. Sec. 500.167

There is a reference to "Appendix E". That is not part of the draft ordinance.

Staff comment: As part of the reorganization, Appendix A was changed to Appendix E. Aside from the name change, there are no other proposed changes to that part of the code.

19. Sec. 500.516

Property inspections should only be done on complaint, not periodically.

20. Sec. 500.522

There should be some additional residential zoning districts because properties that are 3-5 acres are different than those that area 10, 20, 30 acres

21. Sec. 500.232

The statement that there is "generally a 3-year term unless otherwise specified in the conditional use order" is too restrictive and costly to renew.

22. Article 6 - Multiple sections

The change from "shall" to "should" is not appropriate.

Staff comment: The proposed change ("shall" to "should") was recommended by the Town Attorney.

23. Sec. 500.482

The change to the definition in subsection (3) should not be reduced to 250 cubic yards. Keep at 1,000 cubic yards.

24. Sec. 500.566 (D)

The restriction on connecting multiple buildings should be removed

25. Sec. 500.567 (C)

The restriction on connecting multiple buildings should be removed

26. Sec. 500.604(B)

Any recreational vehicle must be operable

Msc. Provisions

27. Parking

There should be some restrictions on parking for businesses which limit allowed use to employees currently working within the establishment or customers patronizing the establishment. Overnight parking, and vehicle, trailer, mobile home or camper storage is not permitted at any time.

28. Snow

Any business or establishment may only remove snow and ice to portions of their own property (not plow it across the street or somewhere else and assure that snow removal activities do not block the view of traffic to safety move in the area or enter or exit roadways.

29. Shared driveway

If a driveway is shared by two or more persons, a written and recorded agreement on the maintenance of the driveway must be present.

30. Commercial vehicles

Cars with business logos/names should be allowed in buildings.

31. Nonconforming use section (#7)

Need to be clear about when the Plan Commission makes a recommendation in the context of a continuance.

32. Conditional use violations

Final notice to the applicant should be sent by certified mail (currently by regular mail or email).

33. Application fees

General Cost of applying for a conditional use for farm properties are too much.

Appendix A (Land Use Matrix)

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|----------------|--|
| (2.03) | Farm education should be allowed by right in the RR district and the AP district. |
| (2.04) | Farm recreation should be allowed by right in the RR district and the AP district. |
| (2.06) | Farm stores should be allowed by right in the RR district and the AP district. |
| (2.08) | Petting farms should be allowed by right in the RR district and the AP district. |
| (2.09) | U-cut Christmas tree operations should be allowed by right in the RR district and the AP district. |
| (2.09) | U-cut Christmas tree operations should be allowed in the RR district as a conditional use. |
| (2.10) | U-pick operations should be allowed by right in the RR district and the AP district. |
| (2.10) | U-pick operations should be allowed in the RR district as a conditional use |
| (10.04) | Commercial kennels should be allowed in the RR district and the AP district. |
| (18.08) | Commercial truck parking should be allowed in the RR district as a conditional use |
| (18.08) | Commercial truck parking should be allowed in the RR district |
| (18.11) | Farm building for non-farm storage should be allowed by right in RR and AP districts; currently C (Conditional). |
| (19.12) | Seasonal product sales should be allowed in both RR and AP, currently only in AP with a Conditional Use. |

Appendix B (Use Summary)

- (2.09) Onsite parking should be required for U-cut Christmas tree operations.
- (2.09) The operator of a U-Cut Christmas tree operation should provide and enact a plan to prevent and cleanup dirt, mud and other debris from being tracked onto any adjoining roadways and clean up and remove any such trackage at least once per 24-hour period or more often if directed.
- (2.10) Onsite parking should be required for U-pick operations.
- (2.10) The operator of a U-Cut Christmas tree operation should provide and enact a plan to prevent and cleanup dirt, mud and other debris from being tracked onto any adjoining roadways and clean up and remove any such trackage at least once per 24-hour period or more often if directed.

Multiple agritourism uses Signage for roadside stands, Christmas tree farms, pick your own strawberry or similar operation should comply with the Town's sign ordinance and may not be placed within the right-of-way of the road.

- (6.01) A campground should not be located in a dam inundation area.
- (6.01) A campground located in a floodplain should have at least one access route that is at an elevation above which any flooding can occur to ensure safe ingress and egress in an emergency.
- (6.01) A campground with more than 15 spaces should be required to have an emergency shelter for campers during a severe weather event.
- (18.08) Commercial truck parking should be revised to allow 4; currently 1.
- (18.08) Commercial truck parking should also be revised to allow 3 semi-trucks; currently 1.
- (18.15) Limiting a home occupation to 2 customers per day is not realistic.
- (18.15) The limitation of 2 cars per day for a home occupation is too restrictive.
- (18.15) Home occupations should be allowed in accessory buildings.
- (18.15) Home occupations should allow workers who are not the people who live in the dwelling
- (18.15) The limitation of 2 cars per day for a home occupation is too restrictive.
- (18.17) Remove the part requiring removal of loafing shed after 6 months if there are no livestock on site.

- (18.17) The livestock limitation doesn't take into account foals. How are they to be counted?

Comments submitted by Commissioner Lewis:

Only additional specific requests that I heard that you didn't capture were:

- 500.482 (could be coupled with your #23), a request for a definition of "ground".
- App B, 18.11 and/or matrix: A request to allow non-Farm storage in Farm Buildings as Permitted by right in RR & AP.
- App B, 18.17: Statement that this does not allow the ability to sell a foal or any birds, & I think that was a request.

More general requests that you touched on, but are overarching decisions, so for a more broad ranging discussion are:

- reconciling RR provisions for large vs small lots, and whether to split the district.
- clarification of CU constraints, and my recommendation of another meeting of the TB/PC with John Macy to get the latest status and get the newer people caught up.
- the issue of "should" vs "shall" for Town responsibilities
- availability & timeliness of minutes, which also goes to posting of meetings to some extent
- getting ordinances on-line
- concerns about fees and costs