

## **SECTION 5.0 – CONDITIONAL USE PERMITS**

### **5.1 General Provisions**

Any use listed as a conditional use in this Chapter shall be permitted only upon application in duplicate to the Town Clerk and issuance of a Conditional Use Permit by the Planning & Zoning Committee. A Conditional Use Permit shall be issued only upon satisfaction of the requirements listed herein, in addition to all other requirements of this Chapter. 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 may require, in addition to the information required for a Conditional Use Permit, 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 this Chapter.

### **5.3 Procedure**

(1) The procedure for obtaining a Conditional Use Permit is as follows:

(A) A Conditional Use Permit Application is filed with the Town Clerk. Such application shall contain the exact legal description of the premises for which the Conditional Use Permit is requested, a list of the reasons justifying the application, and shall specify the proposed use and have attached the following:

1. Plot Plan drawn to a scale of 1 inch equals 100 feet showing the area for which the Conditional Use Permit is requested, its location, its dimensions, the location and classification of adjacent zoning districts, and the location and existing use of all properties within 400 feet of the area for which the Conditional Use Permit is requested.
2. Owners' Names and Addresses of all properties lying within 400 feet of the area for which the Conditional Use Permit is requested.
3. Additional Information required by the Planning & Zoning Committee.
4. Fee Receipt from the Town Clerk for the Conditional Use Permit Fee.

(B) The Town Clerk shall notify all property owners within 400 feet of the

parcel in question and publish a Class 1 Legal Notice listing the time and place of the public hearing, the conditional use being proposed, and the location of the proposed conditional use.

- (C) A public hearing is held by the Planning & Zoning Committee (hereafter, “the Committee”).
- (D) The application and information obtained at the public hearing is reviewed by the Committee at a public meeting as to potential problems that may affect the community, adjoining parcels, occupants of adjoining parcels, and/or the physical environment.
- (E) Upon consideration of these factors and the “Standards” in Sections 5.4 and 5.5, the Committee may approve, approve with conditions, or deny the Conditional Use Permit Application. In addition, prior to approval of any Conditional Use Permit Application in connection with any land located in the A-1 District or the A-1a District, the Committee may only approve such Application upon finding that the conditional use is consistent with agricultural use and is necessary in light of the alternative locations available for such use.

(Amended by Ordinance 101303B)

- (F) Upon approval, the Chairperson of the Planning & Zoning Committee is to forward a copy of the approved Conditional Use Permit Application and any conditions of approval to the Town Clerk and to the County Planning and Development Agency. The County will enumerate the conditional use on the Official Zoning Map and enter it into the Town's Conditional Use Database. Upon receipt of any approved Conditional Use Permit Application in connection with any land located in the A-1 District or the A-1a District, the Town Clerk shall notify the Department of Agriculture, Trade, and Consumer Protection of the issuance of such conditional use permit.

(Amended by Ordinance 101303B)

- (G) If a permit is denied, the Committee shall provide its decision in written form, listing the reasons for denial and explaining the applicant's appeal rights.
- (H) The applicant or the applicant's authorized legal representative shall attend the public hearing as well as all other meetings of the Planning & Zoning Committee in connection with the applicant's requested Conditional Use Permit. Failure of the applicant or the applicant's authorized legal representative to attend such public hearing or other meetings shall be grounds for denial of applicant's request.

- (2) Conditional Use Permits are assigned to a parcel of land or a particular location on the parcel, not the person who owns the land. Conditional Use Permits are revocable by majority vote of the Committee if the conditional use is not actively

used for a period of one (1) year, conditions of approval are not being met, or the conditional use is expanded without Committee approval.

- (3) The owner of a parcel of land upon which a Conditional Use Permit has been issued may voluntarily surrender said permit, whereupon the permit shall terminate and no longer run with the parcel.

#### 5.4 Standards Applicable to All Conditional Uses

- (1) In considering a Conditional Use Permit Application, the Planning & Zoning Committee shall consider the following factors:
  - (A) That the amount of land is limited to that which is reasonably necessary to accommodate the proposed use.
  - (B) Wherever possible a proposed use shall be placed on that portion of a parcel which contains the poorest quality agricultural soils or that portion of the parcel which would be the least productive for agricultural purposes, and the use shall be placed as close as possible to other non-agricultural uses.
  - (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 Chapter, and substantial justice to all parties concerned.
- (2) No Conditional Use Permit shall be issued for any use which might result in damage to town roads, including, but not limited to, the operation of an agri-business or the use of sewage sludge for fertilizer purposes, unless the Committee is assured that adequate provision for repair of potential damages has been made. Such adequate provision may include a performance bond assuring that any damage to the road caused by the applicant will be repaired or reconstructed at the applicant's full expense, or a letter of credit that will protect the town against any expense due to the inability or refusal of the applicant to repair any damage to the road.

#### 5.5 Standards Applicable to Conditional Uses within the A-1 and A-1a Districts

- (1) In considering a Conditional Use Permit Application in the A-1 or A-1a District, the Planning & 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) Wherever possible a proposed use shall be placed on that portion of a parcel which contains the poorest quality agricultural soils or that portion of the parcel which would be the least productive for agricultural purposes, and the use shall be placed as close as possible to other non-agricultural uses.
- (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.

#### 5.6 Conditions Attached to Conditional Use Permit

Upon consideration of the factors listed above, the Planning & Zoning Committee may attach such conditions, in addition to those otherwise specifically listed, that it deems necessary in furthering the purposes of this Chapter. Violation of any of these conditions shall be deemed a violation of this Chapter.

#### 5.7 Notice and Public Hearing

Before issuing a Conditional Use Permit, the Planning & Zoning Committee shall hold a public hearing. Notice of such public hearing specifying the time, place, and matters to come before the Committee shall be published as a Class 1 Notice as referred to in Chapter 985 of the Wisconsin Statutes. The Town Clerk shall also notify all property owners within 400 feet of the parcel in question by U.S. mail, postage prepaid, with the above information.

#### 5.8 Conditional Use Permit Fee

The applicant, upon filing his or her application, shall pay a fee to the Town of Harmony in accordance with the following schedule:

- Conditional Use Permit Fee.....\$350.00  
or such other amount as shall hereafter be determined by resolution of the Town Board

[The Town Board passed a resolution on 6-5-00, setting a \$100 fee for non-commercial temporary uses.]

5.9 Conditional Use Permit Procedure for Livestock Facilities

(Section 5.9 Created by Ordinance 100206)

(1) Approval Required

These procedures apply to livestock facilities that may require a conditional use permit under this subsection.

(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:

1. The applicable size threshold for a conditional use permit established in the zoning district where the facility is located.
2. 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) Except as provided in subparagraph (A), 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 subsection.

(C) Except as provided in subparagraph (A), a permit is not required for a livestock facility that was previously issued a conditional use permit or other local approval. 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 Chapter ATCP 51 of the Wisconsin Administrative Code, including any authorized local modifications. The application requirements specified in ATCP 51 are incorporated by reference, without reproducing them in full. The application form and worksheets establish compliance with the standards in ATCP 51 and this

subsection.

This operator must file four (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 \$1000 shall accompany an application.

(5) Application Review Procedure

(A) Within 45 days after 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 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 Planning & Zoning Committee notifies an applicant that the application is complete, the Committee shall notify adjacent landowners of the application. The Committee shall use the approved notice form in ATCP 51 and mail a written notice to each adjacent landowner.

(C) The 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 Committee may extend this time limit for good cause, including any of the following:

1. The Committee needs additional information to act on the application.
2. The applicant materially modifies the application or agrees to an extension.

The 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 Committee will act on the application.

(6) Public Hearing

The 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 Chapter ATCP 51 of the Wisconsin Administrative Code. These standards are incorporated by reference, without reproducing them in full.
  - (B) Setbacks authorized by this Chapter.
- (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 subsection.
  - (B) A permit may be denied if any of the following apply:
    - 1. The application, on its face, fails to meet the standards for approval.
    - 2. The Committee finds that, based on other clear and convincing information in the record, the proposed livestock facility does not comply with applicable standards in this subsection.
    - 3. Other grounds authorized by Section 93.90 of the Wisconsin Statutes that warrant disapproving the proposed livestock facility.
  - (C) No conditions may be imposed on a permit other than the standards provided in this subsection.
- (9) Record of Decision
- (A) The 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
- As required by Section ATCP 51.36 of the Wisconsin Administrative Code, the Town Clerk shall, within 30 days of the Committee's decision on the application, 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 Committee has granted or denied an application under this subsection. (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 Committee has withdrawn a local approval under this subsection, 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 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:

- (A) Begin populating the new or expanded livestock facility.
- (B) 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 subsection, and the Committee shall not withhold authorization for those changes.

(13) Compliance Monitoring

The Committee shall monitor compliance with this subsection as follows:

- (A) Upon notice to the livestock facility owner, request the right of the Zoning Officer to personally view the permitted facility at a reasonable time and date to ensure that all commitments of the application as approved are being complied with.
- (B) If the livestock facility owner refuses the 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, in order to inspect the permitted facility for the purpose of protection of the public health and safety under Section 66.0119 of the Wisconsin 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 with the commitments of the approved application be complied with within a reasonable amount of time.

- (D) If non-compliance with the permit conditions as described in the written notice given by the Zoning Officer continues past the stated reasonable time to comply, the Zoning Officer may take further action as provided in this Chapter, 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 Committee shall schedule a hearing within five days to determine if the conditions of the permit have been complied with, or whether non-compliance with 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 subsection are conditioned on the livestock operator's compliance with the standards in this subsection, and with commitments made in the application for a permit. The Committee is authorized to suspend a permit or seek other redress provided for in this Chapter 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, at the applicant's expense, record with the register of deeds 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.