TOWN OF DELAFIELD PLAN COMMISSION MEETING  
Tuesday, August 7, 2018, 7:00 p.m.  
Town of Delafield Town Hall  
W302 N1254 Maple Avenue, Delafield, WI 53018

AGENDA

1. Call to Order and Pledge of Allegiance
2. Approval of the minutes of July 17, 2018
3. Communications (for discussion and possible action): None
4. Unfinished Business:
   A. Town of Delafield, Re: Discussion, consideration and possible action on amendments to the Town Zoning Code (Chapter 17) and Land Division and Development Control Code (Chapter 18) related to modification and regulation of Conditional Uses (tabled 7/17/18)
5. New Business:
   A. Kate Began, Greenhill Preservation, Re: Consideration and possible action on a request for height increase to install a cupola on a proposed barn at Gwynn Hill Farm located at W239 N130 Bryn Drive.
   B. Betty Moore, N1 W29653 Hermie Lane, Re: Consideration and possible action on a request to increase the garage door height for a detached accessory building to 10 feet (code maximum is 9 feet).
   C. Iron Pipe Development, Bill Zach, Re: Consideration and possible action on the request for final plat and deed restriction approval for the White Oak Conservancy subdivision located at the southwest corner of Cushing Park Road and Abitz Road.
6. Discussion: None
7. Announcements and Planning Items: Next meeting - September 4, 2018
8. Adjournment

Mary T. Elsner, Town Clerk

The Plan Commission may take action on any item on the agenda. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice. Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact Mary Elsner, Town Clerk, at W302 N1254 Maple Avenue, Delafield, WI 53018-2117. This agenda is for informational purposes only. Posted on 8/2/18.
TOWN OF DELAFIELD
PLAN COMMISSION MEETING
Tuesday, July 17, 2018

Members present: L. Krause, E. Kranick, C. Dundon, G. Reich (entered at 7:15), K. Fitzgerald, T. Frank
Members absent: T. Oberhaus
Also present: T. Barbeau, Town Engineer, 6 citizens

First order of business: Call to Order and Pledge of Allegiance
Acting Chairman Krause called the meeting to order at 7:00 p.m. and led all in the Pledge of Allegiance.

Second order of business: Approval of the minutes of May 1, 2018
MOTION MADE BY MS. DUNDON, SECONDED BY MR. KRANICK TO APPROVE AS PRESENTED.
MOTION CARRIED.

Third order of business: Communications (for discussion and possible action):
A. None

MOTION MADE BY MR. KRANICK, SECONDED BY MS. DUNDON TO MOVE ITEM 4A OUT OF ORDER.
MOTION CARRIED.

Fifth Order of Business: New Business
A. Pat Leverence N48 W28320 Lynddale Road, Re: Consideration and possible action on a request for approval
of a plan of operation to operation a retail facility in a portion of the farmhouse at N48 W28320 Lynddale
Road.

Engineer Barbeau displayed the subject property identifying the existing 3 rental units. He stated the proposal
for retail use to sell home décor in a portion of the existing farmhouse. The site plan is not changing, the
proposed hours of operation are consistent with the other retail facilities on site and retail shops are a
permitted use in the B-1 district.

Pat Leverence, N47 W28270 Lynddale Road, stated that parking is controlled by signage and monitored by her.
All parking is striped with the exception of the former garage east of the existing farmhouse.

MOTION MADE BY MR. FITZGERALD, SECONDED BY MS. DUNDON TO APPROVE THE CHANGE IN
THE PLAN OF OPERATION AND DEVIATION IN THE NUMBER OF PARKING STALLS SUBJECT TO
ONGOING MONITORING BY MS. LEVERENCE. MOTION CARRIED.

B. Richard Clark N47 W27547 CTH JK, Re: Consideration and possible action on a request to combine two
parcels into one parcel located at W297 N2917 Oakwood Grove Road.

Engineer Barbeau stated the owner’s proposal to combine 2 separate properties/tax key #’s into 1. The
property on the south includes an original parcel along with small pieces of adjacent land. The house on the
lower property part will remain and the older part of the home will be removed. In order to complete the work,
the owner was required to combine the lands into one property and obtain variances from Waukesha County.
The Village of Hartland approved this request last evening.

MOTION MADE BY MR. KRANICK, SECONDED BY MR. FITZGERALD TO RECOMMEND APPROVAL OF
THE CERTIFIED SURVEY MAP, DATED 7/17/18, TO COMBINE TWO PARCELS INTO ONE PARCEL
LOCATED AT W297 N2917 OAKWOOD GROVE ROAD, TO THE TOWN BOARD. MOTION CARRIED.
C. Watercrest Investments, James Cadd owner, Re: Consideration and possible action on a request to allow sale of mulch at the site of Lake Country Auto located at N47 W28229 Lynndale Road.

Joseph Corbett stated his request to sell mulch on a 20'x20' plot on the subject property during the months of June thru September. The proposed hours of operation are 6:00 a.m. – 5:00 p.m. The mulch will be removed by November. He stated that a 2'x2' sign is included in the proposal.

**MOTION MADE BY MR. FITZGERALD, SECONDED BY MR. KRANICK TO APPROVE THE PLAN OF OPERATION CONDITIONED UPON A ONE-SEASON TRIAL.**

**AMENDED MOTION MADE BY MR. FITZGERALD, SECONDED BY MR. KRANICK TO INCLUDE THE REQUIRED REMOVAL OF THE MULCH BY SEPTEMBER 1.**

**AMENDED MOTION MADE BY MR. FITZGERALD, SECONDED BY MR. KRANICK TO INCLUDE THE HOURS OF OPERATION, MONDAY-SATURDAY, 8:00 A.M. – 5:00 P.M. MR. REICH – NAY, MR. FITZGERALD – AYE, MS. DUNDON AYE, MR. KRANICK – NAY, MR. KRAUSE – AYE, MR. FRANK – AYE.**

**MOTION PASSED 4-2.**

**Sixth Order of Business:** Discussion

A. Discussion regarding potential land reconfiguration located at W297 N2910 and N28 W29718 Oakwood Grove Road, Owner is P&G 29700-28704, LLC and All Lots, LLC, Leigh Peterson Managing Partner.

Would the Town be in favor of combing the lots by CSM? The Plan Commission desired to incorporate the two adjacent lots to the east into the proposal to develop the lands.

B. Discussion regarding development of self-storage units on lands located at N47 W28229 Lynndale Road, Watercrest Investments, James Cadd, owner.

Linda Saidon, Watercrest Investments, displayed the proposed plan for cold storage and climate controlled buildings on approximately 100,000 sq. ft. of the subject property to include 332 units.

The general consensus of the Plan Commission is that storage units are not a compatible use on this property, due to aesthetics and location. They do not fit in with existing shops and residential properties nearby. Traffic is also a concern.

**Fourth Order of Business:** Unfinished Business

A. Town of Delafield, Re: Discussion, consideration and possible action on amendments to the Town Zoning Code related to regulation of Conditional Uses (tabled 6/5/18)

**MOTION MADE BY MR. KRANICK, SECONDED BY MS. DUNDON TO REMOVE FROM THE TABLE.**

**MOTION CARRIED.**

The Plan Commission suggested the following revisions: Include building maintenance conditions and standards in the Ordinance; revise Chapter 18.16 Item 6.d., to read, "40% permanent common open space is not required if all lots in the PUD meet a minimum lot size of 5 acres or greater"; remove (8) in Chapter 18.16 and the reference to (8) (a) listed in 18.16 6. (6); recommend that R-1(A), R-3 and R-L be 75% minimum open space per lot; and, exclude drive-thru and drive-in restaurants.

The Plan Commission would like to review the pre-public hearing copy of the suggested revisions at the next meeting.
Seventh Order of Business:  Announcements and Planning Items:
Next meeting – August 7, 2018

Eighth Order of Business:  Adjournment
MOTION MADE BY MR. REICH, SECONDED BY MS. DUNDON TO ADJOURN AT 9:00 P.M.  MOTION CARRIED.

Respectfully submitted,

Mary T. Elsner, CMC, WCMC
Town Clerk/Treasurer

Minutes approved on:
Plan Commission Report for August 7, 2018

Town of Delafield Plan Commission – Chapter 17 and 18 Code modifications
Agenda Item No. 4. A.

Report

Below is a summary of the edits made since the July 17, 2018 Plan Commission meeting. Enclosed is the staff’s recommended public hearing draft of the ordinances for portions of Chapter 17 and 18.

Chapter 17

1. There will be no change to the definition of Agriculture to zone out Concentrated Animal Feeding Operations (CAFOs) and pig farms. According to Chapter 93.90(3) of the State Statutes, we cannot prohibit a type of livestock facility based on the number of animal units. Instead we are recommending to keep the Feed Lot Operation conditional use, with additional standards.

2. Elimination of the statement in the A-1 zoning district that requires land to be developed as a Residential PUD (we eliminated the allowance of PUD’s in the A-1 district).

3. Kept the statement that requires development in the A-2 zoning district to be developed as a PUD, but referred to the allowance created in Chapter 18.16 6. d.

4. Elimination of the requirement for a CUP for roadside stands on A-2 zoned lands less than 10 acres.

5. In the B-1 through B-3 zoning districts, restaurants are allowed as permitted uses, but language has been added that drive through and drive in restaurants are excluded.

Chapter 18

1. In the Lot Allocation section of the Residential Development Control System, the threshold amount of points required increased from 6 to 7.

2. In the Criteria section of the Residential Development Control System, a new provision was added that provides 2 points if a developer chooses to develop land as a Planned Unit Development.

3. An exception to the 40% permanent common open space requirement was added under the Standards Under Which Permitted section, all lots are single family lots and are 5 acres or greater.

4. Eliminated reference to PUD in the A-1 Agricultural District

5. Changed the Minimum Open Space Per Lot in the R-1 (a) and R-2 zoning districts to 75%.

6. Included language that allows any type of housing unit within the district boundaries – multi-family, single family, garden apartments, condominiums, duplexes and senior housing.
ORDINANCE NO. __________

AN ORDINANCE TO AMEND AND REPEAL AND RE-CREATE CERTAIN SECTIONS OF
CHAPTER 17, AND REPEAL AND RE-CREATE ALL OF SECTION 17.05 OF THE
OF THE TOWN OF DELAFIELD MUNICIPAL CODE
RELATED TO CONDITIONAL USES

WHEREAS, On November 27, 2017, the State of Wisconsin enacted 2017 Wisconsin
Act 67 related to requiring a political subdivision to issue a conditional use permit under certain
circumstances which resulted in requiring substantial evidence, rather than personal
preferences or speculation directly pertaining to the requirements and conditions an applicant
must meet to obtain a conditional use permit, and

WHEREAS, Chapter 17.05 of the Town of Delafield Municipal Code contains a minimal
amount of requirements and standards in order to issue a Conditional Use permit, and

WHEREAS, the Town Board has determined that the current standards within the Town
Code do not provide the Town with adequate information to evaluate the Conditional Use
request under the “substantial evidence” standard, and

WHEREAS, the Town Board directed the Plan Commission to review Chapter 17 and
recommend modifications to the Chapter to incorporate standards for review of requests for
Conditional Use Permits,

WHEREAS, upon publication of a Class 2 Notice per Chapter 985 Wisconsin Statutes
once each week for two consecutive weeks prior to the hearing, and upon at least 10 days prior
written notice to the clerk of any municipality whose boundaries are within 1,000 feet of any
lands included in the proposed Zoning Code territory as required by Wisconsin Statutes
Section 62.23(7)(d), the Town Board held a public hearing regarding the tentative
recommendation, on _______________________; and

WHEREAS, the Plan Commission has recommended the ordinance be adopted; and

WHEREAS, the Town Board finds that this change to the Town Zoning Code is not a
down zoning ordinance because it does not decrease the development density of land and it
does not reduce the permitted uses of land, and therefore the super majority requirement of
Section 66.10015, Wisconsin Statutes, does not apply to this ordinance; and

WHEREAS, having determined that all procedural requirements and notice requirements
have been satisfied, having given the matter due consideration, and having based its
determination on the effect of the granting of such zoning amendments on the health, safety
and welfare of the community, and the immediate neighborhood in which said use will be
located, and having given due consideration to the municipal problems involved as well as the
impact on the surrounding properties as to noise, dust, smoke and odor, and others, hereby
determine that the zoning amendments will not violate the spirit or intent of the Zoning Code for
the Town of Delafield, will not be contrary to the public health, safety or general welfare of the
Town of Delafield, will not be hazardous, harmful, noxious, offensive and will not for any other
reason cause a substantial adverse effect on the property values and general desirability of the
neighborhoods within the Town, and will be consistent with the Town of Delafield
Comprehensive Plan.

NOW, THEREFORE, the Town Board of the Town of Delafield, Waukesha County,
Wisconsin DOES HEREBY ORDAIN as follows:

SECTION 1: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning,”
Section 17.02 entitled, “Rules and Definitions,” subsection 2 entitled “Specific Words and
Phrases,” the word Agriculture shall be repealed and recreated to read as follows:

Agriculture. All uses, commonly classified as agriculture, horticulture, floriculture,
viticulture, or forestry, such as: the tilling of soil, crop and tree farming, truck farming,
gardening, plant nurseries, dairy farming, keeping or raising of domestic livestock or
poultry and sod farming together with the operation of any machinery or vehicles that are
incidental to the above uses and any agricultural business such as fruit packing, dairying
or similar activities, except that Concentrated Animal Feeding Operations (CAFO’s) and
pig farms shall not be considered Agriculture for the purposes of this Chapter.

SECTION 2: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning,”
Section 17.04 entitled, “Zoning Districts,” subsection 5., entitled “Specific District,” subsections,
permitted Accessory Uses,” shall be amended to include the following:

(#) In-law units, subject to the following conditions:

(a) The Waukesha County Health Department certifies that the septic system
will accommodate the proposed use.

(b) The maximum living area in an in-law unit shall not exceed eight hundred
(800) square feet for a one (1) bedroom unit and nine hundred (900)
square feet for a two (2) bedroom unit.

(c) There shall be an additional parking space for the in-law unit.

(d) The architecture of the residence shall be compatible with the adjacent
residential neighborhood and should appear to be a single family
residence.
(e) The Plan Commission may recommend and the Town Board require where appropriate that there be an interior door between the living units.

(f) A deed restriction shall be filed in the Waukesha County Register of Deeds' office prior to issuance of the building permit indicating that this living unit is for family members of the principal dwelling unit only.


(8) Creameries

SECTION 4: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning,” Section 17.04 entitled, “Zoning Districts,” subsection 5 entitled “Specific District,” subsection F. entitled “A-1 Agricultural District,” subsection 5., entitled, “Area Regulations,”, subsection a., shall be repealed and recreated to read as follows:

(1) Lot Size
Minimum area shall be 40 acres. If land is developed into a subdivision, it shall meet the PUD requirements of Section 17.05 5. AM. of these regulations.


(10) Quarters for Household or Farm Employees
(a) Quarters shall be occupied only by a full time employee who works on the premises and members of the employee’s family
(b) Number of employees that can have quarters on the premises is five (5).
(c) A deed restriction shall be filed in the Register of Deeds office prior to allowance of the use indicating that the living unit is for employees of the farm
and their families, and that there can be no more than 5 employees that can
have quarters on the farm.

SECTION 6: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning,”
Section 17.04 entitled, “Zoning Districts,” subsection 5 entitled “Specific District,” subsection H.
entitled “Permitted Uses,” subsection (2) (b) shall be repealed and recreated to read as follows:

(i) If more large animals or equivalent fowl or small animal(s) or combination thereof
is desired, beyond the maximum allowed on the lot per subsection a. (2) (a) above, they shall
only be permitted as a Conditional Use under section 17.05 5. WJ. Keeping of Poultry or
Livestock.

SECTION 7: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning,”
Section 17.04 entitled, “Zoning Districts,” subsection 5 entitled “Specific District,” subsection H.
entitled “Permitted Accessory Uses”, subsection (4) is hereby repealed and recreated to read
as follows:

(4) Roadside stands, provided off-street parking is made available for at least four
vehicles—except that roadside stands on properties of 10 acres or less shall require a
conditional use permit under section 17.05 5. AC. Other Uses.

SECTION 8: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning,”
Section 17.04 entitled, “Zoning Districts,” subsection 5 entitled “Specific District,” subsection H.
entitled “Permitted Accessory Uses”, shall be amended to read as follows:

(7) Quarters for Household or Farm Employees on Farms over 10 acres
(a) Quarters shall be occupied only by a full time employee who works on the
premises and members of the employee’s family
(b) Number of employees that can have quarters on the premises is five (5).
(c) A deed restriction shall be filed in the Register of Deeds office prior to
allowance of the use indicating that the living unit is for employees of the farm
and their families, and that there can be no more than 5 employees that can
have quarters on the farm.

a. Lot Size
Minimum area shall be 3 acres. If land is developed into a subdivision, it shall meet the PUD requirements of Section 18.16 of the Town Code, subject to the allowance stated in Chapter 18.16 6. d.

SECTION 10: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning,” Section 17.04 entitled, “Zoning Districts,” subsection 5 entitled “Specific Districts,” subsection J. entitled “B-1 Restricted Business District,”, subsection 2., entitled “Use Regulations,” subsection a. entitled “Permitted Uses,” shall be repealed and recreated to read as follows:

a. Permitted Uses
The following uses shall be permitted in the B-1 Restricted Business District, subject to approval by the Plan Commission, of building, site and operational plans:

(1) Retail stores and shopping, offering convenience goods and personal services.

(2) Business, professional or public service offices.

(3) Customer service establishments such as restaurants (excluding drive-through or drive-in restaurants), shoe repair, barber and beauty shops, studios and similar uses.

(4) Antique shops, gift shops, arts and craft studios and similar uses.

SECTION 11: Chapter 17 of the Town of Delafield Municipal Code entitled “Zoning,” Section 17.04 entitled, “Zoning Districts,” subsection 5 entitled “Specific Districts,” subsection K. entitled “B-2 Shopping Center District”, subsection 2., entitled “Use Regulations,” subsection a. entitled “Permitted Uses,” shall be repealed and recreated to read as follows:

a. Permitted Uses
The following uses shall be permitted in the B-2 Shopping Center District, subject to approval by the Plan Commission, of building, site and operational plans:

1. Retail stores and shopping, offering convenience goods and personal services.
2. Business, professional, public service, banking and savings and loan offices.
3. Customer service establishments such as restaurants (excluding drive-through and drive-in restaurants) shoe repair, barber and beauty shops, studios and similar uses.
4. Laundromats, dry cleaning establishments and laundry or dry cleaning pick up stations.
5. Dental and medical clinics.
6. Display galleries and training schools.
7. Public utility offices.
8. Antique shops, gift shops, arts and craft studios and similar uses.


a. Permitted Uses
The following uses shall be permitted in the B-3 Business Park District, subject to approval by the Plan Commission, of building, site, landscape and operational plans:

1. Professional offices, corporate offices, administrative offices, studios, business centers, laboratories and similar operations not involving retail or commercial sales, industrial use or residential use.
2. Restaurants (excluding drive-through and drive-in restaurants).

SECTION 13: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection M. entitled "M-1 Industrial District,", subsection 2., entitled "Use Regulations," subsection a. entitled "Permitted Uses," shall be repealed and recreated to read as follows:
(11) Commercial Greenhouses.
(12) Laboratories for testing, experimental or analytical purposes.

SECTION 14: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection M. entitled "M-1 Industrial District," subsection 6., entitled "Additional Regulations," subsection i. shall be amended to read as follows:

i. The operation plan submitted for Plan Commission approval shall specify and quantitatively describe any noise, vibration, dust, gas, smoke, toxic matter and odors produced by the operation and plans for containing or abating such nuisance, including fertilizers or chemicals.

SECTION 15: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection N. entitled "P-1 Park and Recreation District", subsection 5., entitled "Area Regulations," subsection d. shall be repealed and recreated to read as follows:

d. Open Space
   Ninety percent (90%) of each lot shall remain as open space except as follows: (1) the footprint of rustic structures shall not be counted as impervious area in the open space calculation. (2) The open space may be reduced pursuant to a conditional use for public and semi-public buildings and uses, granted pursuant to Section 17.05 5. AH., provided that the open space is not reduced below 60%.

SECTION 16: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.05 entitled "Conditional Uses," is hereby repealed and recreated to read as follows:

SECTION 17.05

CONDITIONAL USES

1. APPROVAL REQUIRED.
Certain uses and situations are of such a special nature, or are so dependent upon actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in the chapter of the specific standards, regulations or conditions which would permit such use. Therefore, these uses, upon determination in each individual situation, may be permitted as conditional uses in such district, subject to such requirements as are hereinafter specified for each situation.

2. BASIS OF APPROVAL.

The determination of such conditional use by the Town Board shall be based on whether or not the proposed use will violate the spirit or intent of the chapter; be contrary to the public health, safety or general welfare; be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factor; or for any other reason cause an adverse effect on the property values and general desirability of the neighborhood. Except as may be specifically otherwise provided, any such use shall conform to the building location, height, area, yards, parking, loading, traffic and highway access regulations of the district in which it is located and the approving body may require compliance with such other conditions as may be deemed necessary in the specific situation in addition to any which may be herein stated. The location, building plan, site plan, and plan of operation shall be in sufficient detail to enable the Town to make its determination as to the appropriateness of the proposed grant of conditional use. The Town may take into consideration architectural and landscape treatments. Satisfactory provision shall be made for parking and circulation needs, for drainage and sewage disposal, for adequate planting screen where necessary, for operational control devices where necessary to eliminate noise, dust, odor or smoke, and such other factors as would be pertinent to such determination. Variances shall only be granted as provided in section 17.10 of this Chapter.

3. PROCEDURE.

A. Petition.

A request for grant of conditional use status shall be submitted in writing to the Town Clerk who shall promptly refer such petition to the Plan Commission for recommendation.

B. Data Required.

Such petition shall be accompanied by appropriate data and information necessary for proper evaluation of the request including specifically the following:

1. Names, addresses and phone numbers of the applicant, owner of the site, architect, engineer, and contractor.

2. The site legal description, location, zoning district, building and site plans, and plan of operation.

3. An accurate map of the property drawn to a reasonable scale, including indication of general terrain and topographic characteristics, the location of all significant terrain features such as streams, ponds, tree growth, etc., and the location of all existing structures.

4. An accurate and complete written description of the use for which conditional grant is being requested including pertinent statistics and operational characteristics (plan of operation).

5. An accurate and complete description of the current use of existing building and land.
6. Plans and other drawings showing proposed development of the site and buildings including landscape plans, location of parking and service areas, driveways, exterior lighting, type of building material, etc.

7. Any other pertinent information required by the Code Enforcement Officer, Town Engineer, Plan Commission or Town Board as set forth in forms supplied by the Town including percolation test results and well water data.

8. The person applying for a conditional use permit shall certify on the application that the information contained therein is accurate and complete to the best of that person's knowledge.

C. Public Hearing.
Within a reasonable time after an application and all required information has been filed, a public hearing shall be held by the Plan Commission pursuant to this chapter. Within 40 days after the public hearing and all investigation, the Plan Commission shall make a recommendation to the Town Board unless the time is extended by the Petitioner.

D. Fee.
Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of notification and holding of public hearing. Costs incurred by the Town in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner.

4. DETERMINATION.
The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If conditional use status is not granted, the reasons therefor will be included in such record. A grant of conditional use status, subsequent changes or additions thereto and terminations thereof shall be in accordance with the following:

A. Recording.
1. An official record of such conditional grant shall be prepared by the Town Clerk on a form prescribed therefor which shall include the description of the use for which the grant is given and all conditions attached thereto as well as a copy of the resolution of the Town Board approving the grant. A copy of the completed form shall be recorded at the Waukesha County Register of Deeds as a covenant on the title for the premises for which the conditional use was granted.

2. The occupancy permit shall be appropriately noted as to the conditional status granted.

3. Indication shall also be made on the zoning map by appropriate code number or symbol.

B. Changes or Additions.
Subsequent change or addition to the approved plans or use shall first be submitted for approval to the Plan Commission and, if in the opinion of the Plan Commission, such change or addition
C. Conditions.

Conditions such as landscaping, architectural design, type of construction, floodproofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements may be required by the Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Chapter.

D. Termination. (repealed and recreated 2014-01)

Where a conditional use does not continue in conformity with the conditions of the original approval, or where it appears that the information shown on the Petitioner’s application was not accurate or complete, or where a change in the character of the surrounding area or of the use itself causes it to be no longer compatible with surrounding areas or for any cause based upon consideration for the public welfare, the conditional grant may be terminated by action of the Town Board following referral to the Plan Commission for public hearing and recommendation thereon.

E. Standard Conditional Use Conditions.

The standard conditions listed below are automatically incorporated into the terms of a Conditional Use Permit issued under this section, unless otherwise stated in the Conditional Use Permit.

1. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the Town Plan Commission for determination.

2. No use is hereby authorized unless the use is conducted in a lawful, orderly and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption or exception to any law, ordinance, order or rule of either the municipal governing body, the County of Waukesha, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein. This order shall not be deemed to constitute a building permit, nor shall this order constitute any other license or permit required by Town ordinance or other law.

3. This conditional use hereby authorized shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the Town Plan Commission as being in compliance with all pertinent ordinances.

4. All buildings and grounds shall be maintained in a neat, attractive and orderly way.

5. The property shall comply with all rules and regulations of the Town of Delafield and the local Fire Department, including submission to routine inspections by Town and Fire Department staff.

6. Should the permitted conditional use be abandoned in any manner, or discontinued in use for twelve (12) months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to Town, or should a
change in the character of the surrounding area or the use itself cause it to be no longer compatible
with the surrounding area or for similar cause based upon consideration of public health, safety or
welfare, the conditional use may be terminated by action of the Town Plan Commission, pursuant to
the enforcement provisions of this Conditional Use Order, and all applicable ordinances.

7. Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use,
including but not limited to an addition, modification, alteration, and/or amendment to the use,
premises (including but not limited to any change to the boundary limits of the subject property),
structures, lands or owners, other than as specifically authorized herein, shall require a new permit
and all procedures in place at the time must be followed.

8. Unless this conditional use permit expressly states otherwise, plans that are specifically required by
this conditional use order may be amended upon the prior approval of the Town Plan Commission if
the Town Plan Commission finds the plan amendment to be minor and consistent with the conditional
use permit. Any change in any plan that the Town Plan Commission feels, in its sole discretion, to be
substantial shall require a new permit, and all procedures in place at the time must be followed.

9. Petitioner and Owner Agreement. As a condition precedent to the issuance of the conditional use
permit, the owner of the Subject Property shall approve the issuance of this conditional use permit
upon the terms and conditions described herein in writing, and the Petitioner is required to accept the
terms and conditions of the same in its entirety in writing.

10. Professional fees. Petitioner shall, on demand, reimburse the Town for all costs and expenses of any
type that the Town incurs in connection with this application, including the cost of professional
services incurred by the Town (including engineering, legal, planning and other consulting fees) for the
review and preparation of the necessary documents or attendance at meetings or other related
professional services for this application, as well as for any actions the Town is required to take to
enforce the conditions in this conditional approval due to a violation of these conditions.

11. Payment of charges. Any unpaid bills owed to the Town by the Subject Property Owner or his or her
tenants, operators or occupants, for reimbursement of professional fees (as described above); or for
personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed
to the Town; shall be placed upon the tax roll for the Subject Property if not paid within thirty (30) days
of billing by the Town, pursuant to section 66.0627, Wisconsin Statutes. Such unpaid bills also
constitute a breach of the requirements of this conditional approval that is subject to all remedies
available to the Town, including possible cause for termination of this approval.

12. Current Address. The Petitioner is obligated to file with the Town Clerk a current mailing address and
current phone number at which the Petitioner can be reached, which must be continually updated by
the Petitioner if such contact information should change, for the duration of this conditional use. If the
Petitioner fails to maintain such current contact information, the Petitioner thereby automatically
waives notice of any proceedings that may be commenced under this conditional approval, including
proceedings to terminate this conditional use.

13. Conditions Shown in Minutes Incorporated. All conditions of approval imposed by duly adopted
motion of the Town Board in its consideration of the Petitioner’s application, as noted in the Minutes of
the Town Board meeting at which approval was granted, are specifically incorporated herein by
reference.

14. Should any paragraph or phrase of this conditional use permit be determined by a Court to be
unlawful, illegal or unconstitutional, said determination as to the particular phrase or paragraph shall
not void the rest of the conditional use and the remainder shall continue in full force and effect.

15. If any aspect of this conditional use permit or any aspect of any plan contemplated and approved
under this conditional use is in conflict with any other aspect of the conditional use or any aspect of
any plan of the conditional use, the more restrictive provision shall be controlling as determined by the
Town Plan Commission.

F. Performance Standards.

1. It is the intent of this Section to describe performance standards for the regulation of uses and
to establish an objective and equitable basis for control and to insure that the community is
adequately protected from potential hazardous and nuisance-like effects. These performance
standards are designed to limit, restrict, and prohibit the effects of those uses outside their
premises or zoning district. In addition, these performance standards are intended to comply
with other applicable local, state and federal codes and standards. All structures, lands, air and
water shall hereafter comply with the following performance standards.

2. Control of Odors

No operation or activity shall emit any substance or combination of substances in such quantities that
create an objectionable odor as defined in Ch. NR 429, Wis. Adm. Code and is tested in accordance
with NR 429.03 (2).

3. Control of Fire and Explosive Hazards
   a. All uses involving the manufacturing, utilization, processing, or storage of flammable and
      explosive materials shall be provided with adequate safety devices against the hazard of fire and
      explosion and with adequate firefighting and fire suppression equipment and devices as may be
      required by the Fire Prevention Code.
   b. All materials that range from active to intense burning shall be manufactured, utilized, processed,
      and stored only in completely enclosed buildings which have noncombustible exterior walls and
      an automatic fire extinguishing system.
   c. The storage of fuels and other materials that produce flammable or explosive vapors shall be
      permitted only after review and approval by the Town of Delafield Fire Department and in accord
      with their requirements to minimize fire and explosive hazards.

4. Glare, Heat and External Lighting
   a. No operation or activity shall produce any intense lighting, glare or heat with the source directly
      visible beyond the boundary of the property line. Operations producing light, glare, or heat shall
      be conducted within an enclosed building.
   b. External lighting shall be shielded so that light rays do not adversely affect adjacent uses.

5. Water Quality Standards
   a. No activity shall locate, store, or permit the discharge of any treated, untreated, or inadequately
      treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or
      temperature that might runoff, seep, percolate, or wash into surface or subsurface waters so as
      to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore
      deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be
      harmful to human, animal, plant, or aquatic life.
   b. No activity shall withdraw water or discharge any liquid or solid materials so as to exceed or
      contribute toward exceeding the minimum standards and those other standards and the
      application of those standards set forth in Wis. Adm. Code NR 102 or in other applicable Chapters
      which regulate water quality.

6. Noise
No operation or activity shall transmit any noise beyond the boundaries of the property so that it becomes a nuisance.

7. Vibration

a. No operation or activity shall transmit any physical vibration that is above the vibration perception threshold of an individual at or beyond the property line of the source. Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a reasonable person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

b. Vibrations not directly under the control of the property user and vibrations from temporary construction or maintenance activities shall be exempt from the above standard.

5. CONDITIONAL USES PERMITTED.

Subject to the foregoing, in addition to such uses enumerated in the district regulations, the following may be permitted as conditional uses in the districts specified, provided further that a public hearing pursuant to this Chapter shall be held before approval for any such conditional use is granted.

A. Animal Hospitals and Kennels. This provision does not apply to hobby kennels as defined by section 17.02. Hobby kennels are separately provided for in this chapter.

1. Where Permitted. Subject to the provisions of subsection 2, animal hospitals and kennels, are conditional uses which may be permitted in the following districts:

<table>
<thead>
<tr>
<th>Animal Hospitals</th>
<th>Kennels</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1 Agricultural District</td>
<td>A-1 Agricultural District</td>
</tr>
<tr>
<td>B-2 Shopping Center District</td>
<td>A-2 Rural Home District</td>
</tr>
<tr>
<td>M-1 Industrial District</td>
<td>M-1 Industrial District</td>
</tr>
<tr>
<td>B-3 Business Park District</td>
<td></td>
</tr>
</tbody>
</table>


Conditional use status shall not be granted to animal hospitals or kennels unless all of the following standards are met:

a. Except for animal hospitals, no such use shall be permitted on a lot less than 3 acres in area.

b. No building other than one used only for residence purposes or as an animal hospital, shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.

c. The facility is adequately soundproofed.

d. The facility is maintained in a sanitary condition. Plan shall be submitted and approved for waste removal and method of addressing odors.

e. Outdoor kennels shall be at least 100 feet from any property line.

f. Dogs taken outside the kennel shall be on a leash and shall remain on the property.

g. Drop off and pick-up times shall be between 6 am and 10 pm.
h. Traffic circulation shall be designed to minimize light and sound to adjacent landowners.

B. Bed and Breakfast Establishments.

1. **Where Permitted.** Subject to the provisions of subsection 2., bed and breakfast establishments are conditional uses which may be permitted in the following districts:

   - R-1 Residential District
   - R-2 Residential District
   - R-L Residential Lake District
   - A-1 Agricultural District
   - A-2 Rural Home District
   - A-E Exclusive Agricultural District

2. **Standards Under Which Permitted.**

   Conditional use status shall not be granted to bed and breakfast establishments unless all of the following standards are met:

   a. Use of the facility as a bed and breakfast establishment automatically terminates a transfer or sale of property.

   b. All bed and breakfast establishments shall be subject to and comply with Wisconsin Administrative Code HSS 197 which is hereby incorporated by reference. Any future amendments, revisions or modifications of the current or future codes incorporated herein are intended to be a part of this Code in order to secure uniform statewide regulation of bed and breakfast establishments.

   c. Each bed and breakfast establishment shall be required to keep a register and require all guests to sign such register using their actual names and address before being assigned quarters. The register shall be available for inspection by the Police Department and Code Enforcement Officer for a period of not less than one year.

   d. No guest may be permitted to occupy space in a bed and breakfast establishment for a longer period than fourteen (14) consecutive days.

   e. A minimum of one off-street parking stall is provided for every guest bedroom with a minimum of two additional for the owner/proprietor. All parking areas meet the size requirements of the Town Code and must be hard-surfaced and maintained in a reasonably dustless condition. The parking areas abutting residential properties is screened from view using a minimum 6' high solid fence or comparable screening. No off-street parking shall be allowed within the front yard setback area and shall be a minimum of 3' from any side yard property line.

   f. Sign proposed meets Town sign code requirements.

   g. Every bed and breakfast establishment shall be properly addressed with numbers on the front of the structure, a minimum of 5" high and of contrasting color so as to be visible from the street.

   h. The applicant shall provide evidence that the proposed use will not impact the surrounding neighborhood and proximity to any existing bed and breakfast establishment.
i. Applicant has received an occupancy permit and is in compliance with all state and local regulations and ordinances.

j. Use of the bed and breakfast facility for any special gathering (i.e. wedding receptions, parties, etc.) is prohibited.

k. The owner of a bed and breakfast shall live on the premises.

l. All refuse containers shall be screened from view.

C. Churches, Synagogues and Other Buildings for Religious Assembly.

1. Where Permitted. Subject to the provisions of subsection 2., churches, synagogues, or other buildings for religious assembly are conditional uses which may be permitted in the following districts:

   R-1 Residential District
   R-1 A Residential District
   R-2 Residential District
   R-3 Residential District
   R-L Residential Lake District
   A-1 Agricultural District
   A-2 Rural Home District
   A-3 Suburban Home District
   B-1 Restricted Business District
   B-2 Shopping Center District
   B-3 Business Park District
   M-1 Industrial District


   Conditional use status shall not be granted to churches, synagogues or other buildings for religious assembly unless all of the following standards are met:

   a. The structure conforms to double the offset requirements of the district in which it is located.

   b. The height limitation of the district in which the use is located does not exceed 50’ provided the minimum required setback and offsets shall be increased 2’ for every additional foot of height in excess of the permitted maximum in that district. The aforesaid height regulation shall not apply to the spire or belfry of a church except where airport safety zone regulations specifically limit the maximum height.

   c. The open space for the facility shall be a minimum of 50%.

   d. Site meets Town parking requirements.

   e. Access locations meet site distance requirements.

   f. Traffic study is provided to determine additional improvements to adjacent streets and impact on adjacent development.
D. Conversion.

1. **Where Permitted.** Subject to the provisions of subsection 2., conversion of the use of barns and farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items are conditional uses which may be permitted in the following districts:

   A-1 Agricultural District
   A-2 Rural Home District
   A-E Exclusive Agricultural
   M-1 Industrial District

2. **Standards Under Which Permitted.**

   Conditional use status will not be granted to any conversion of the use of barns or farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items unless all of the following standards are met:

   a. Use shall be on lots of 10 acres or more.

   b. Buildings shall consist of the buildings as now exist on the premises. No additional buildings or additions may be made without the express approval of the Town in accordance with the terms of the applicable ordinances.

   c. A signed and sealed plat of survey shall be submitted detailing the size and offsets of all existing buildings.

   d. Access shall be from a public street.

   e. There shall be no storage outside.

   f. Water supply facilities and septic system, if any, shall be in accordance with the rules of the Waukesha County Division of Health and Department of Industry, Labor and Human Relations.

   g. Noise shall be what is common to storage facilities.

   h. No commercial signs permitted.

   i. Site shall be landscaped prior to issuance of an occupancy permit.

   j. The use shall be compatible with adjacent land uses.

E. Elderly Housing Units.

1. **Where Permitted.** Subject to the provisions of subsection 2., elderly housing units are conditional uses which may be permitted in the following districts:

   R-1 Residential District
   R-1(A) Residential District
   R-2 Residential District
R-3 Residential District
R-L Residential Lake District
A-1 Agricultural District
A-2 Rural Home District
A-3 Suburban Home District


Conditional use status shall not be granted to elderly housing units unless all of the following conditions are met:

a. The minimum lot area shall be 20,000 sq. ft.

b. The minimum unused lot area per dwelling unit shall be 1500 sq. ft. This shall not include parking spaces or buildings.

c. Side yard and rear yard setbacks shall be a minimum of 10’ on each side and the road setback requirement shall be maintained.

d. There shall be a minimum living area of 400 sq. ft. for an efficiency apartment, 550 sq. ft. for a one bedroom apartment and 750 sq. ft. for a two bedroom apartment. No dwelling unit shall have more than two bedrooms.

e. There shall be one covered parking space per dwelling unit.

f. Multi-story housing for the elderly shall be provided with elevators.

g. Restrictions shall be placed on the development consistent with State and Federal regulations governing elderly housing.

h. In the case of phased development of an elderly project as defined, the developer shall present evidence to the Plan Commission that at least 50% of all previous phases are occupied.

Q. Feed Lot Operation.

1. Where Permitted. Subject to the provisions of subsection 2., feed lot operations are conditional uses which may be permitted in the following districts:

   A-2 Rural Home District
   M-1-Industrial District
   A-1 Agricultural District
   A-E Exclusive Agricultural District


   Conditional use status shall not be granted to a feed lot operation unless all of the following standards are met:

   a. The site plan shall show existing and proposed grades, drainage, all structures, drives and hard surfaces areas, open space calculation and the methods to be employed to control, contain or divert runoff of animal wastes. The site plan drawn, at a legible scale, shall include the proposed livestock operation location
including identification of all buildings, proposed construction, surface flow patterns, navigable and intermittent streams, and wetlands or water bodies within five hundred (500) feet of the proposed feedlot, livestock operation or livestock structure. Proposed construction and structural details of the proposed livestock operation, including but not limited to dimensions, cross sections, concrete thickness, reinforcement schedules, and the location of wells within three hundred (300) feet of the feedlot. The location and type of vegetation / ground cover between feedlot and adjacent water bodies.

b. The operation plan submitted must detail the method of operation and the equipment necessary to accomplish a safe and sanitary operation. The operation plan shall also set forth the number of animals to be contained in the proposed feed lot including the type and weights. The operation plan shall also detail the method of animal collection, storage and disposal to be employed.

c. No feed lot operation shall be permitted on less than 10 acres of tillable land nor closer than 1,000' from any land presently zoned for a residential district.

d. No accessory residence shall be permitted closer than 100' to the feed lot operation.

e. No part of the feed lot operation shall be closer than 300' from the center line of any public road nor closer than 200' from the lot lines of the site on which the production unit is situated.

f. It is important that careful planning and sound management be applied to the operation of manure handling and waste runoff. Farmers are encouraged to seek advice from the Waukesha County Land Resources Division. A manure management plan addressing the proposed methods of manure handling and waste runoff control shall be prepared and made a part of the plan of operation for any proposed "Feed Lot Operation."

g. Animal waste shall not be mechanically spread between December 1st and April 1st unless the manner of application has been reviewed and approved by the Town Board.

h. Applicant shall submit method to address odors and all mechanical equipment to be used to minimize odors. Data indicating the anticipated odor level shall be submitted with the application. Odors shall be controlled such that there is no odor greater than the odor at the property line of a typical farming operation in the Town of Delafield that is not a feed lot.

i. All barn and site lighting shall be shielded such that the amount of light at the property line is 0 footcandles. An iso-illumination drawing shall be submitted indicating the amount of illumination on the property. Lights shall be cut off type fixtures and shall have no glare to surrounding properties.

j. Applicant shall submit the location and type of Best Management Practices (BMP's) for controlling runoff and drainage for the operation, and all documentation necessary for evaluation the BMP design.

k. The Applicant shall submit written proof to the satisfaction of the Town Zoning Administrator and plan Commission, that the Applicant has obtained all licenses,
permits and approvals required by State law, if any, for the proposed feed lot operation.

F. Group Day Care Center.

1. **Where Permitted.** Subject to the provisions of subsection 2., group day care centers are conditional uses which may be permitted in the following districts:

   R-1 Residential District  
   R-1A Residential District  
   R-2 Residential District  
   R-3 Residential District  
   R-L Residential Lake District  
   B-1 Restricted Business District  
   B-2 Shopping Center District  
   B-3 Business Park District  
   A-1 Agricultural District  
   A-2 Rural Home District  
   A-3 Suburban Home District  
   M-1 Industrial District

2. **Standards Under Which Permitted.**

   a. Conditional use status shall not be granted to a group day care center unless the property owner's written permission is obtained and submitted as part of the conditional use permit application.

   b. The facility may not open until proof of licensure from the State of Wisconsin is provided to the Town Clerk.

   c. Access to the site meets WisDOT site distance standards.

   d. Drop-off and pick-up areas can accommodate projected traffic.

   e. Parking stalls are provided for employees in accordance with Section 17.09 I. of the Town Code.

G. Hobby Kennels.

1. **Where Permitted.** Subject to the provisions of subsection 2., a hobby kennel, as defined in section 17.02, is a conditional use which may be permitted in the following districts:

   R-1 Residential District  
   R-1A Residential District  
   R-2 Residential District  
   R-3 Residential District  
   R-L Residential Lake District  
   A-1 Agricultural District  
   A-2 Rural Home District  
   A-3 Suburban Home District  
   A-E Exclusive Agricultural District
2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to a hobby kennel unless all of the following standards are met:

a. The applicant must provide an annual report that they meet the standards herein, summary of complaints, if any and any changed conditions in the neighborhood.

b. The lot must be at least 1 1/2 acres in area.

c. Applicant shall provide a signed and sealed plat of survey showing the location of all features on the lot, adjacent structures, outdoor kennel location, fences and areas where dogs will be let out.

d. Plan shall be submitted to address dogs that get out of the kennel.

e. Plan shall be submitted detailing safety measures to be taken to assure that dogs do not run loose in the area.

f. The kennel must be a minimum of 50' from the closest lot line.

g. No more than 3 dogs or other household pets shall be permitted on a 1 1/2 acre site plus 2 dogs or other household pets per additional acre up to 10 dogs or other household pets maximum.

**H. Intermediate Day Care Home.**

1. **Where Permitted.** Subject to the provisions of subsection 2., intermediate day care homes are conditional uses which may be permitted in the following districts:

   R-1 Residential District  
   R-1(A) Residential District  
   R-2 Residential District  
   R-3 Residential District  
   R-L Residential Lake District  
   A-1 Agricultural District  
   A-2 Rural Home District  
   A-3 Suburban Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to an intermediate day care home unless all of the following conditions are met:

a. The lot is at least 7200 square feet in area.

b. A minimum of 140 square feet of living space per child is provided.

c. A minimum of 100 square feet of fully enclosed outside play area shall be provided per child at maximum permitted occupancy.
d. Conditional use status shall not be granted to a group day care center unless the property owner's written permission is obtained and submitted as part of the conditional use permit application.

e. The facility may not open until proof of licensure from the State of Wisconsin is provided to the Town Clerk.

f. Access to the site meets WisDOT site distance standards.

g. Drop-off and pick-up areas can accommodate projected traffic.

h. Parking stalls are provided for employees in accordance with Section 17.09 l. of the Town Code.

I. Keeping of Poultry or Livestock.

1. **Where Permitted.** Subject to the provisions of subsection 2., the keeping of poultry or livestock is a conditional use which may be permitted in the following districts:

   A-2 Rural Home District

2. **Standards Under Which Permitted.**

   Conditional use status shall not be granted to the keeping of poultry or livestock unless all of the following standards are met:

   a. The keeping of poultry, fowl and domestic livestock must be on lots of 3 acres or more.

   b. Maximum practical conditions of neatness and sanitation are maintained and all fowl are kept confined or enclosed.

   c. Not more than one head of livestock or ten fowl shall be kept per acre of land except where such use existed prior to the date of the chapter as principal commercial or agricultural use, such use may be continued subject to the limitations regulating a nonconforming use as regulated by this chapter.

   The keeping of hogs, male goats or furbearing animals must be on lots of 20 acres or more.

J. Legal Nonconforming Uses.

**Where Permitted.** Subject to the provisions of Section 7 of this Chapter, a legal nonconforming use may be granted conditional use status in the district in which it is located subject to submitting a petition under this section.

K. Master Sign Program.

1. **Where Permitted.**

   A-1 Agricultural District
A-E Exclusive Agricultural District
A-2 Rural Home District
B-1 Restricted Business District
B-2 Shopping Center District
B-3 Business Park District
M-1 Industrial District
P-1 Park and Recreation District
WF-1 Wetland-Floodplain District

2. **Standards Under Which Permitted.**
   a. All signs shall be uniform in theme, size, color and style.
   b. Use shall be for multi-tenant operations, office parks, industrial parks, multi-tenant office and retail buildings, and commercial developments that include separate commercial activities.
   c. Applicant shall provide mock ups of all signs and include dimensions, area, colors, height, material, "method of attachment, lighting and site plan with location shown.
   d. The requirements of Section 17.08 may be modified by the express terms of the Master Sign Program conditional use order.

L. **Private Clubs and Outdoor Recreational Facilities Such as Recreational Camps, Golf Courses, Bathing Beaches and Resorts.**

1. **Where Permitted.** Subject to the provisions of subsection 2., private clubs and outdoor recreational facilities such as recreational camps, golf courses, bathing beaches and resorts are conditional uses which may be permitted in the following districts:

   All Districts.

2. **Conditions Under Which Permitted.**

   Conditional use status shall not be granted to private clubs or outdoor recreational facilities such as recreational camps, golf courses, bathing beaches and resorts unless all of the following conditions are met:

   a. The lot is at least 3 acres in area, except that this area requirement shall not apply in the following districts:
      B-1 Restricted Business District
      B-2 Shopping Center District
      B-3 Business Park District
      M-1 Industrial District

   b. No building, other than one used only for residence purposes, shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.

   c. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.
d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.

M. Quarrying.

1. **Where Permitted.** Subject to the provisions of subsection 2., quarrying, as defined in this chapter, is a conditional use which may be permitted in the following districts:

   M-1 Industrial District

2. **Standards Under Which Permitted.**

   Conditional use status shall not be granted to a quarrying operation unless all of the following standards are met:

   a. A quarrying permit for such operation must be obtained from the Town Board. Such permit shall be for an initial period as is deemed appropriate to the specific situation but not to exceed 5 years and may be renewed thereafter for periods not to exceed 3 years provided application therefor shall be made at least 60 days and no more than 120 days before expiration of the original permit. Application after such date shall be treated as an original application.

   b. Application for a quarrying permit shall be made on forms supplied by the Town Clerk.

   c. The application for a quarrying permit shall be accompanied by: a fee as set from time to time by the Town Board to defray the cost of notification and holding of public hearing; a full and adequate description of all phases of the contemplated operation and the specific mention of type of machinery and equipment which will be or might be necessary to carry on the operation; where the operation is to include the washing of sand and gravel, the estimated daily quantity of water required, its source and its disposition shall be made part of the description; a legal description of the proposed site with a map showing its location with indications of existing or proposed private access roads, and of existing or proposed public highways adjacent to the site which will be affected by the operation; a topographic map of the area at a minimum contour interval of 5' extending beyond the site to the nearest public street or highway or to a minimum distance of 300' on all sides; a restoration plan as required by subparagraph d. below; the names and addresses of the owners of all properties within 1/2 mile of the perimeter of the proposed quarrying operation.

   d. In order to insure that the area of quarrying operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall, prior to the issuance of a permit, submit to the Town Board a plan for such restoration in the form of the following:

   (1) An agreement with the Town whereby the applicant contracts to restore the premises to a condition and within a time satisfactory to the Town;

   (2) A physical restoration plan showing the proposed contours after restoration, plantings and other special features of restoration and the method by which such restoration is to be accomplished;

   Town of Delafield Zoning Code, rev. 7/18
(3) A certified check or other financial guarantee satisfactory to the Town, in an amount sufficient in the opinion of the Town Board to secure the performance of the restoration agreement;

(4) Such agreement and financial guarantee shall be in a form approved by the Town Attorney;

(5) In the event of the applicant's failure to fulfill this agreement, such bond, check or other financial guarantee shall be deemed forfeited for the purpose of enabling the Town to perform the restoration;

(6) Restoration shall proceed as soon as practicable and at the order and direction of the Town Engineer. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than 2 years;

(7) At any stage during the restoration, the plan may be modified by mutual agreement between the Town Board, after referral to the Plan Commission and the owner or operator;

(8) Where there is any backfilling, the material used or the method of fill shall not be such as to create a health hazard nor which would be objectionable because of odor, combustibility or unsightliness. In any case, the finished grade of the restored area, except for rock faces, outcroppings, water bodies or areas of proposed building or paving construction shall be of a sufficient depth of earth to support plant growth;

(9) Within one year after the cessation of the operation, all temporary structures (excepting fences), equipment, stockpiles, rubble heaps or other debris shall be removed or backfilled into the excavation so as to leave the premises in a neat and orderly condition;

(10) In any restoration procedure which takes place in sand or gravel pits or on other sites where the material is of a loose or friable nature, no slope shall be left which is steeper than a ratio of four horizontal to one vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.

e. The application and all data and information pertaining thereto shall be referred to the Plan Commission for public hearing, report and recommendation back to the Town Board within a reasonable time after the public hearing.

f. Notices shall be sent through the mail or otherwise placed in the hands of all owners of land in the Town and to the Clerks of adjoining municipalities who have land which lies within 1/4 mile of the perimeter of the proposed quarrying operation. These notices shall be mailed or delivered at least 10 days prior to the date of hearing. Substantial compliance with the notice requirements of this section shall be deemed sufficient.

g. The Town Board shall, within a reasonable time after receipt of the recommendation, approve or disapprove the application for the proposed quarrying operation and shall be guided by consideration of the public health, safety and welfare and shall give particular consideration to the following factors in making their decision: the effect of the proposed...
operation on existing roads and traffic movement in terms of adequacy, safety and efficiency; the effect of the proposed operation on drainage and water supply; the possibility of soil erosion as a result of the proposed operation; the degree and effect on dust, noise, smoke and air pollution as a result of the proposed operation; the practical possibility of restoration of the site; the effect of the proposed operation on the natural beauty, character, tax base, land value and land uses in the area; the most suitable land use for the area with particular consideration for future residential value.

h. Any conditions necessary to the granting of a permit shall be in writing and copies made a part of the permit and a part of the records of the Town.

i. The procedures set forth above shall also apply to applications for renewal of a permit. Determination in regard to renewal shall be based particularly on an evaluation of the effect of the continuance of the use with relation to changing conditions in the area. Where renewal is not granted, the reasons for refusal shall be presented to the applicant in writing and made a part of the records of the Town.

j. No part of the quarrying operation shall be permitted closer than 1,000', nor shall any accessory access road, parking area or office building be permitted closer than 500' to the district zoned Rural Home, Suburban Home or Residential at the time of the grant of the permit, except with the written consent of the owners of a Rural Home, Suburban Home or Residentially zoned properties within 1,000' but in no case shall such operation be permitted closer than 200' to a Residential District; no quarrying operation shall be permitted if 30 or more families reside within a band 1/2 mile wide around the perimeter of the proposed operation.

k. No part of the quarrying operation other than access roads shall be located closer than 200' nor shall any accessory parking area, stock pile or office building be located closer than 100' to the base setback line along any street or highway.

l. No part of the quarrying operation shall be permitted closer than 200'.

m. Nor shall any accessory access road, parking area or office building be permitted closer than 50' to any property line except with the written consent of the owner of the adjoining property or except where the line is abutting an existing quarrying operation, but in no case shall such operation be closer than 20' to any property line except by agreement between abutting quarrying operations or be in conflict with the provisions of this chapter relating to preservation of topography.

n. Fencing or other suitable barrier shall be erected and maintained around the site or around portions of the site where, in the determination of the Town Board, such fencing or barrier is necessary for the protection of the public, and shall be of a type approved by the Town Board.

o. All machinery and equipment used in the quarrying operation shall be constructed, maintained and operated in such a manner as to minimize dust, smoke, air pollution, noise and vibration.

p. Access and haulage roads on the site shall be maintained in a dust free condition by surfacing or treatment as directed by the Town Engineer.

q. The crushing, washing, refining or other processing other than the initial removal of material, may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit.
r. In stone quarries the production or manufacturing of veneer stone, sills, lintels, cut flagstone, hearthstones, paving stone and similar architectural or structural stone and the storing or stockpiling of such products on the site shall be considered a permissible part of the operation, provided such production does not require the use of crushing or other heavy machinery except as may be specifically authorized under the terms of the permit.

s. The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mixed concrete and any similar production or manufacturing processes which might be related to the quarrying operation may be permitted as an accessory use only as specifically authorized under the terms of the permit.

t. The washing of sand and gravel shall be prohibited in any operation where the source of water is of doubtful capacity or where the quantity of water required will, in the opinion of the Town Engineer, seriously affect the supply of water for other uses in the area or where the drainage from such washing would result in silting or pollution of the stream or water course.

u. The planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Town Board to screen the operation so far as practical from normal view, to enhance the general appearance from the public right-of-way, and generally to minimize the damaging effect of the operation on the beauty and character of the surrounding country side. Such planting shall be started as soon as practical, but no later than one year after quarrying operations have begun and shall be done according to the decision of the Town Board.

v. Quarrying operations shall not begin before the hour of 7 a.m. and shall not continue after the hour of 6 p.m. and no operation shall take place on Sundays or legal holidays. During periods of national or unusual emergency, time and hours of operation may be altered at the discretion of the Town Board and through the issuance of a special permit which shall be renewable at 30 day intervals.

w. When the operation is limited to the removal of topsoil, the Town Board may, consistent with the intent of these regulations, modify any or all of the provisions of this section, provided however, that in no case shall operations be permitted closer than 10' from any property line, or to a depth in excess of 18" or so as to adversely affect the drainage of the area and in such instances the operator shall restore the excavated area with topsoil to a depth of 4" and seed the same with grass.

x. The provisions of this section shall not apply to an operation which is incident to the legitimate use of the premises, provided, however, where such operation involves the commercial disposal of the material removed, approval of the Town Board shall be required and such operation shall be limited to a maximum period of 6 months.

y. Application to existing operations:

(1) Within 60 days after the adoption of this chapter, all existing quarrying operations shall be required to register with the Town Clerk submitting pertinent data relative to the present operation including the boundaries of the actual operation and of the ownership. A quarrying permit shall be granted to such existing operation subject to compliance with the operation requirements herein where they can be reasonably applied under existing circumstances.
(2) There shall be required within one year after adoption of this chapter, the submission of a plan for restoration of the site of any existing quarrying operation as provided by subparagraph d. above. The plan for restoration in such case shall not, however, impose requirements which are economically unreasonable or unreasonable from an engineering standpoint with respect to conditions resulting from operations prior to enactment of this chapter.

(3) Within 3 years after the date of this chapter any such existing operation shall be required to make application for a renewal permit the same as for reapplication in the case of a new operation under this chapter.

N. Riding Academies or Commercial Stables.

1. Where Permitted. Subject to the provisions of subsection 2., riding academies and commercial stables are conditional uses which may be permitted in the following districts:

   A-1 Agricultural District
   A-2 Rural Home District
   A-E Exclusive Agricultural District

   Conditional use status shall not be granted to riding academies or commercial stables unless all of the following conditions are met:

   a. The lot is at least 7 ½ acres in area.

   b. Building location:

      (1) All buildings shall comply with the setback and offset provisions of the underlying zoning district, except as provided below.

      (2) No new building housing animals shall be closer than 100’ to the lot line of an adjoining lot in a district permitting residential use. All other new buildings shall meet the offset and/or setback requirements of the zoning district in which they are located.

      (3) Existing buildings constituting legal nonconforming structures may remain although their use may be restricted in the grant of permit.

      (4) No existing building, except one designated as a rustic structure pursuant to Town ordinance, which is located closer than 100’ to the lot line of an adjoining lot in a district permitting residential use, may be used to house animals except as may be specifically authorized in the grant of permit after review by the Plan Commission of the following factors:
          - the overall size of the property;
          - the nature of the building’s use;
          - the intensity of the building’s use, including the type and number of animals to be housed, and the hours and days of operation,
          - the pattern and location of other activity on the property;
          - the location and use of buildings on neighboring properties;
          - the activities conducted on neighboring properties;
- the consent of neighboring property owners to the intended use; and, - provisions for manure storage and disposal.
- the location of the existing building in relationship with the adjacent property line.

Any such building may be reconstructed or enlarged only as specifically authorized in the grant of permit or an amendment thereto.

c. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.

d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights, are specifically prohibited.

e. Applicant shall submit a manure management plan which includes the following information:

(1) number and kind of animals
(2) scaled site plan
(3) detailed soil investigation with reference to ground water and bedrock presence
(4) details of any structures to be built for animal waste management
(5) construction timeline
(6) details of manure transfer system
(7) plans for utilization of the manure, including information on land availability, soil types, and methods and rates of application

f. A traffic impact analysis shall be prepared to determine necessary improvements on the adjacent street system and the impact on surrounding landowners.

g. A lighting location and iso-footcandle plan shall be submitted showing cut-off type fixtures, pole types, height. Light at all property lines shall be 0 foot-candles.

O. Solar Energy Systems

1. Where Permitted. Subject to the provisions of this subsection, solar energy systems as defined in Wisconsin Statutes Section 13.48(2)(h) 1.g. are a conditional use which may be permitted in any district in the Town of Delafield.


a. District Regulations. The location, height, area, yard, parking, loading, traffic and highway access and other regulations of the district in which the use is located shall not apply to the solar energy system, unless the Town Board finds that the restriction satisfies one of the following conditions.

i. Serves to preserve or protect the public health or safety.

ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.

iii. It allows for an alternative system of comparable cost and efficiency.
If one or more of the foregoing conditions is found to apply with regard to any such restriction of this Code, then such restriction shall apply to the solar energy system.

b. The Town Plan Commission may recommend, and the Town Board may require compliance with such other conditions as may be deemed necessary in the specific situation, provided that any such restriction imposed must be found to meet the following conditions:

   i. Serves to preserve or protect the public health or safety.

   ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.

   iii. It allows for an alternative system of comparable cost and efficiency.

P. Commercial Planned Unit Development

1. Where Permitted. Subject to the provisions of subsection 2, commercial planned unit developments are conditional uses which may be permitted in the following districts:

   B-2 Shopping Center District
   B-3 Business Park District
   M-1 Industrial District


   Conditional use status shall not be granted to a commercial planned unit development unless all of the following conditions are met:

   a. No structures or sewage disposal systems shall be allowed in the Wetland-Floodplain District or within 75’ of the district.

   b. A minimum amount of permanent common open space shall be set aside in each development as shown in Table 17-1.

   c. The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a planned development without the customary division into individual lots and without requiring strict compliance with the specific district regulations, subject to the requirements of this section. In order to accomplish this intended unified planned development, the Town shall consider all structures and uses on the entirety of each Lot that is included, or included in part, within the jurisdiction of the Town of Delafield Zoning ordinance, in the development. By petitioning for a Commercial Planned Unit Development conditional use, the petitioner accepts that the Town will exercise this authority, even on portions of Lots that may be partially outside of the Town of Delafield’s zoning jurisdiction.

   d. Approval of a development shall be in accordance with the following conditions:

      (1) All sanitary provisions must conform to the requirements of the State Department of Commerce, the Waukesha County Health Department, the local sanitary district and the Town.
(2) The proposed development must be in conformity with the Town comprehensive plan, must not be contrary to the general welfare or economic balance of the community and the benefits and amenities of the resultant development must justify the variation from the normal requirements of the district in which it is located as determined by the Town Board.

(3) The provisions of sections 18.06 and 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;

(4) The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and

(5) The application of these regulations shall be limited to parcels of not less than 10 acres in area.

e. Table 17-1 shall be utilized to determine the minimum amount of open space per development, minimum permanent common open space, minimum lot size and minimum open space per lot to be utilized for the development of a commercial planned unit development and associated platting of lots in the planned unit development:

<table>
<thead>
<tr>
<th>District</th>
<th>Title</th>
<th>Minimum Open Space for Development Area</th>
<th>Minimum Permanent Common Open Space</th>
<th>Minimum Individual Lot Size</th>
<th>Minimum Open Space Per Lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-2</td>
<td>Shopping Center District</td>
<td>50%</td>
<td>25%</td>
<td>2 acres</td>
<td>25%</td>
</tr>
<tr>
<td>B-3</td>
<td>Business Park District</td>
<td>75%</td>
<td>40%</td>
<td>2 acres</td>
<td>25%</td>
</tr>
<tr>
<td>M-1</td>
<td>Industrial District</td>
<td>60%</td>
<td>35%</td>
<td>2 acres</td>
<td>25%</td>
</tr>
</tbody>
</table>

f. Lot width, setback, offsets and height shall follow the regulations found for each zoning district in 17.04.

g. Adequate guarantee shall be provided for permanent retention of open space resulting from these regulations, either by private reservation for use of the building or property owners within the development or by public dedication. Any lot containing permanent common open space shall be owned in common by the owners of the properties that make up the development or by a business owners association and shall not be further divided nor shall they be used for residential, commercial or development purposes. Buildings or structures for noncommercial, recreational or accessory facilities may be permitted in such open space area subject to specific grant in the conditional use permit. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space areas shall be
h. Public sanitary sewer shall be available to service the development. If approved by the Town Board and, if applicable, the Waukesha County Health Department and local sanitary district, a private sewerage disposal system may be accepted as an alternative to the public facility required.

i. The developer shall submit a development plan and enter into an appropriate contract with the Town to guarantee the implementation of the development according to the terms and conditions established as part of the development plan approval.

j. The Plan Commission in making its recommendation and the Town Board in making its determination as to the approval or denial of the conditional use permit for the commercial planned unit development shall give consideration to the purposes in this section and be satisfied as to the following:

(1) That the proposed development is consistent with the spirit and intent of the chapter, is in conformity with the general character of the Town and would not be contrary to the general welfare and economic prosperity of the Town or of the immediate neighborhood, but rather that the benefits from the anticipated improved design of the resultant development justifies the variation from the normal requirements of this chapter through the application of this planned development section.

(2) That the size, quality and architectural design of all buildings in the project will not have an adverse effect upon the general character of the Town and surrounding neighborhood.

(3) That the provisions and facilities of the open space areas being provided is of such quality, size and aesthetic value to justify the approval of the project.

(4) That the setbacks shall be maintained along any boundary street of the project area as required by the existing underlying basic district.

(5) That no building shall be permitted closer to a side or rear boundary street of the project area as required by the existing underlying basic district.

(6) That there shall be no further division of any lot within the development without consideration and approval of a new conditional use permit.

(7) That deed restrictions or an appropriate contract with the Town assuring implementation of the development according to the above requirements is filed with the Waukesha County Register of Deeds.

k. The approval of a petition for conditional use shall be based on and include as conditions thereto the building, site and operational plans for the development as approved, as well as all other commitments offered as required in regard to project value, character or other factors pertinent to an assurance that the proposed development will be carried out as presented for the project. After all conditions of a planned unit development project are certified by the Town Board as being completed, the uses established pursuant to the approved development plan and conditional use order shall be deemed to be permitted uses in the district in which it is located;
however, the conditional use order shall remain in effect for purposes of ongoing compliance with the development plan.

I. Any subsequent change or addition to an approved development plan shall first be submitted for approval to the Plan Commission and, if in the Commission’s opinion such change or addition is not substantial, it may recommend approval to the Town Board without public hearing. If the Plan Commission deems that any proposed change is not acceptable, it shall recommend accordingly to the Town Board. Without limitation to the Plan Commission’s right to determine any other change substantial, a change in any of the following respects shall be automatically construed as substantial:

(1) An increase in the number of buildings from that shown in the approved comprehensive project plan.

(2) A significant change in the size, value or type of structure from that indicated in the approved comprehensive project plan.

(3) The addition of any principal uses not included in the approved comprehensive project plan.

(4) A change in the basic concept of site development which would significantly alter the relationship of uses or open space to adjoining properties.

(5) Change of ownership.

SECTION 17: CONTINUATION OF EXISTING PROVISIONS.

The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution or proceeding brought for the enforcement of any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provisions is stayed pending the final resolution of such actions, including appeals.

SECTION 18: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinance whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.
SECTION 19: EFFECTIVE DATE.

This ordinance shall be effective upon publication or posting as provided by law.

Dated this ___ day of ________________, 2018.

TOWN OF DELAFIELD

________________________________________
Lawrence G. Krause, Town Chairman

ATTEST:

_____________________________________
Mary Elsner, Town Clerk
This ordinance posted or published ________________

H:\181800\Doc\O 180711 Chapter 17 Ordinance for 180807 Plan Commission Meeting.docx
AN ORDINANCE TO CREATE SECTION 18.16 OF THE LAND DIVISION
AND DEVELOPMENT CONTROL ORDINANCE OF THE MUNICIPAL
CODE FOR THE TOWN OF DELAFIELD, WAUKESHA COUNTY,
WISCONSIN

WHEREAS, the Town Board for the Town of Delafield adopted land division regulations
for the Town of Delafield and has amended such regulations from time to time, pursuant to
Wisconsin Statutes §236.45; and

WHEREAS, the land division regulations, as amended, are codified as Chapter 18 of the
Town of Delafield code of ordinances entitled “Land Division and Development Control,” and

WHEREAS, the Town staff have recommended amending the Land Division and
Development Control Ordinance to address the issue of residential planned unit development;
and

WHEREAS, upon the recommendation of the Town of Delafield zoning administrator
this matter was submitted to the Town of Delafield Plan Commission for its consideration at the
___________, 2018, commission meeting, pursuant to Wisconsin Statutes Section
236.45(4); and

WHEREAS, following publication of a Class 2 notice as required by Wisconsin Statute
Section 236.45(4), a public hearing was held on ______, 2018 before the Town of Delafield
Town Board; and

NOW, THEREFORE, the Town Board of the Town of Delafield, Waukesha County,
Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land
Division and Development Control,” Section 18.02 entitled, “Definitions,” Subsection (2)
entitled, “Specific Words and Phrases,” the definition of “Planned Unit Development (PUD)” is
hereby created and inserted among the definitions in alphabetical order, as follows:

**Planned Unit Development (PUD): A self contained development in which subdivision
and zoning controls are applied to the project as a whole rather than to individual lots,
and in which specific benefits are provided to the community as well as the developer
and the future citizens who will reside within the development. Within PUD’s, densities
are calculated for the entire development, usually permitting a trade-off between
clustering of homes and provisions of common open space.**

SECTION 2: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land
Division and Development Control,” Section 18.02 entitled, “Definitions,” Subsection (2)
entitled, “Specific Words and Phrases,” the definition of “Subdivision” is hereby repealed and
re-created as follows:
Subdivision. (Repealed and recreated 2014-08) The division of a lot, parcel or tract of land by the owner or his agent for the purpose of sale or building development where: the act of division creates 2 or more parcels or building sites of 5 acres each or less in area; or 2 or more parcels or building sites of 5 acres each or less in area are created by successive divisions of any part of the original property by any person within a period of 5 years; or where the division creates more than three (3) residential parcels or building sites of any size within 5 years. The following shall not constitute a subdivision: cemetery plats, assessor’s plats, or the sale or exchange of parcels of land between owners of adjoining property, if additional lots are not thereby created and the lots resulting are not reduced below the minimum size required by applicable ordinances (but see Section 18.11).

SECTION 3:  Chapter 18 of the Town of Delafield Municipal Code entitled, “Land Division and Development Control,” Section 18.03 entitled, “Residential Development Control System,” Subsection (5) entitled, “Allocation,” Subsection (b) entitled, “Threshold,” is hereby repealed and re-created as follows:

(b)  Threshold. No residential development permits shall be issued for a subdivision receiving fewer than 67 points in the Plan Commission evaluation.

SECTION 4: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land Division and Development Control,” Section 18.03 entitled, “Residential Development Control System,” Subsection (4) entitled, “Evaluation,” Subsection (b) entitled, “Criteria,” Subsection 12 is hereby created as follows:

12. Planned Unit Development. If the development could be conducted pursuant to this Code either as a planned unit development or a conventional development and the developer chooses to create a planned unit development, the developer will be awarded point(s).

SECTION 5: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land Division and Development Control,” Section 18.16 entitled, “Residential Planned Unit Development” is hereby created as follows:

18.16. Residential Planned Unit Development

1. STATEMENT OF INTENT

A subdivision can be developed as a Residential Planned Unit Development pursuant to this Section. Residential Planned Unit Development is intended to provide for open space/cluster/conservation type residential developments. Such developments incorporate the preservation or enhancement of environmental areas into the development; provide a safe and efficient system for pedestrian and vehicular traffic; provide attractive permanent open spaces as integral part of the development; allow flexibility of overall development design, and ensure adequate standards of planning and construction are met. Residential Planned Unit Development application and review is conducted through the plat approval procedures of this Chapter, in conjunction with the plat, subject to the additional requirements of this Section.

2. MINIMUM ACREAGE
Areas designated as Residential Planned Unit Overlay District shall be under single corporate ownership or control and shall contain a minimum development area of 20 acres.

1. Residential PUD, not in A-1 zoning district — 20 acres
2. Residential PUD in A-1 zoning district — 40 acres

3. BUILDING LOCATION
   (a) Setback — 50 feet minimum.
   (b) Offset — 20 feet minimum.

4. BASE HEIGHT REGULATIONS
   (a) Principal Residence — 30 feet maximum.
   (b) Accessory Structures — 12 feet maximum.

5. LOT AREA REGULATIONS
   (a) Lot size and open space: in accordance with table 18-2 herein
   (b) Lot width: in accordance with table 18-3
   (c) Floor Area:
      (1) Single Floor: 1,500 square feet.
      (2) All Other: See Zoning Code §17.03 5. A.

6. STANDARDS UNDER WHICH PERMITTED

   Residential Planned Unit Development approval shall not be granted to a development unless all of the following standards are met:

   a. Residential Planned Unit Development is permitted in any zoning district that permits residential uses, except the A-1 Agricultural District.

   b. The land must be divided by subdivision plat certified survey map, or condominium plat, pursuant to the plat-land division approval procedures of this Chapter.

   c. No structures or sewage disposal systems shall be allowed in the Wetland-Floodplain District or within 400'-750' of the district.

   d. A minimum of 40% of the total PUD area shall be set aside as permanent common open space, except the 40% permanent common open space is not required if all lots in the PUD are single-family residential lots, and they each meet a minimum lot size of 5 acres or greater. The overall density shall not exceed the maximum density allowed by applicable laws and ordinances under these regulations.

   e. The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a planned development without the
customary division into individual lots and without requiring strict compliance with the specific district regulations, subject to the requirements of this section.

**def.** Lot size, offset, setback and open space and floor area requirements may be modified according to the following conditions:

1. All sanitary provisions must conform to the requirements of the State Department of Industry, Labor and Human Relations, the County Health Department, the local sanitary district and the Town;

2. The proposed development must be in conformity with any local comprehensive plan, must not be contrary to the general welfare or economic balance of the community and the benefits and amenities of the resultant development must justify the variation from the normal requirements of the district in which it is located;

3. All other requirements of the Planned Development must be met as set forth in this subparagraph;

4. The provisions of sections 18.06 and 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;

5. The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and

6. Except as specifically provided in subsection (7)(a) or (7)(b) or (8)(a), below, the application of these regulations shall be limited to parcels of not less than 20 acres in area.

7. In areas designated as “Pewaukee Lake Non-Shoreline Redevelopment Overlay District” the following conditions, in addition to those conditions above that are not in conflict, shall apply:

   a. The parcel shall be at least 5 acres in area, and shall be identified in the Land Use Plan as being within the Pewaukee Lake Non-Shoreline Redevelopment Overlay District.

   b. The Plan Commission in making its recommendation and the Town Board in making its decision shall take into consideration the following: that although a planned unit development is permitted in this district, it is the intent that such development be designed to preserve to the greatest extent reasonably possible, lake views and vistas, woodlands, steep slopes, and other natural features.

8. In a PUD with an A-1 Agricultural base district the following conditions, in addition to those conditions above that are not in conflict, shall apply:

   a. Preserve to the greatest extent reasonably possible, farm fields, pastures and open lands suited to general farming in addition to orchards, woods, bodies of water, marshes and other natural features.
(b) The open space shall be owned by the subdivision Homeowner's Association. The open space may be used for agricultural purposes by any entity who will actively engage in farming on the land. Any farmstead remaining on the property shall be designated and constitute one (1) lot of the subdivision.

e.g. Table 18-1 shall be utilized to compute the maximum dwelling unit density that may be allowed for the development and shall be referred to as the residential density factor.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>Agricultural Districts</td>
<td>[PUD not permitted] 120,000 s.f./dw. Unit</td>
</tr>
<tr>
<td>A-2</td>
<td>Rural Home District</td>
<td>3.5 acres 120,000 s.f./dw. unit</td>
</tr>
<tr>
<td>A-3</td>
<td>Suburban Home District</td>
<td>2.75 acres 78,000 s.f./dw. unit</td>
</tr>
<tr>
<td>C-1</td>
<td>Upland Environmental Corridor Overlay</td>
<td>217,800 s.f./dw. unit</td>
</tr>
<tr>
<td>R-1</td>
<td>Residential District</td>
<td>60,000 s.f./dw. unit</td>
</tr>
<tr>
<td>R-(A)</td>
<td>Residential District</td>
<td>41,000 s.f./dw. unit</td>
</tr>
<tr>
<td>R-2</td>
<td>Residential District</td>
<td>30,000 s.f./dw. unit</td>
</tr>
<tr>
<td>R-3</td>
<td>Residential District</td>
<td>20,000 s.f./dw. unit</td>
</tr>
<tr>
<td>R-L</td>
<td>Residential Lake District</td>
<td>20,000 s.f./dw. unit</td>
</tr>
</tbody>
</table>

†h. The specific allowable maximum number of dwelling units shall be computed by dividing the total area allowable for density by the appropriate Residential Density Factor; existing public right-of-way, open space easements and 80% of
lands designated as floodplain, wetlands Environmental Corridor or Isolated Natural Resource Area may not be included in the area for density computation.

Table 18-2 shall be utilized to determine the absolute minimum lot size and open space per family per lot which may be utilized for the platting of lots in the planned unit development:

**TABLE 18-2**

<table>
<thead>
<tr>
<th>District</th>
<th>Minimum Lot Size</th>
<th>Minimum Open Space Per Lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1 Agricultural District</td>
<td>[PUD not permitted] 36,000 s.f.</td>
<td>[PUD not permitted] 80%</td>
</tr>
<tr>
<td>A-2 Rural Home District</td>
<td>60,000 s.f.</td>
<td>80%</td>
</tr>
<tr>
<td>A-3 Suburban Home District</td>
<td>1 acre 40,000 s.f.</td>
<td>75%</td>
</tr>
<tr>
<td>C-1 Upland Environmental Corridor Overlay</td>
<td>Per Underlying Zoning District</td>
<td>Per Underlying Zoning District</td>
</tr>
<tr>
<td>R-1 Residential District</td>
<td>30,000 s.f.</td>
<td>75%</td>
</tr>
<tr>
<td>R-1(A) Residential District</td>
<td>30,000 s.f.</td>
<td>80% 75%</td>
</tr>
<tr>
<td>R-2 Residential District</td>
<td>25,000 s.f.</td>
<td>80%-75%</td>
</tr>
<tr>
<td>District</td>
<td>Residential District</td>
<td>Min. Lot Width</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>R-3</td>
<td>Residential District</td>
<td>20,000 s.f.</td>
</tr>
<tr>
<td>R-L</td>
<td>Residential Lake District</td>
<td>20,000 s.f.</td>
</tr>
</tbody>
</table>

**Table 18-3**

Table 18-3 shall be utilized to determine the absolute minimum average lot width, setback and offsets which may be utilized for the individual lots.

<table>
<thead>
<tr>
<th>District</th>
<th>Min. Lot Width</th>
<th>Setback</th>
<th>Offset</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1 Agricultural District</td>
<td>[PUD not permitted] 150'</td>
<td>[PUD not permitted] 50'</td>
<td>[PUD not permitted] 20'</td>
</tr>
<tr>
<td>A-2 Rural Home District</td>
<td>175'</td>
<td>50'</td>
<td>20'</td>
</tr>
<tr>
<td>A-3 Suburban Home District</td>
<td>150'</td>
<td>50'</td>
<td>20'</td>
</tr>
<tr>
<td>C-1 Upland Environmental Corridor Overlay</td>
<td>Per Underlying Zoning District</td>
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</tr>
<tr>
<td>R-1 Residential District</td>
<td>130'</td>
<td>50'</td>
<td>20'</td>
</tr>
<tr>
<td>R-1(A) Residential District</td>
<td>130'</td>
<td>50'</td>
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</tr>
<tr>
<td></td>
<td>Residential District</td>
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</tr>
<tr>
<td>R-2</td>
<td>120'</td>
<td>50'</td>
<td>20'</td>
</tr>
<tr>
<td>R-3</td>
<td>120'</td>
<td>50'</td>
<td>20'</td>
</tr>
<tr>
<td>R-L</td>
<td>100'</td>
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</tr>
</tbody>
</table>

Up to a maximum of 20% of the area of lands which are zoned Wetland-Floodplain within the project may be used to determine planned development project densities. However, in no case, shall the total area of Wetland-Floodplain zoned lands used in the computation exceed 25% of the net area of the project which is zoned other than Wetland-Floodplain.

k. Adequate guarantee shall be provided for permanent retention of open area resulting from these regulations, either by private reservation for use of the residents within the development or by public dedication. The parcels created as open space in all zoning districts other than the A-1 District shall be owned in common by the residents of the development or by a home owners association and shall not be further divided nor shall they be used for residential purposes. Buildings or structures for noncommercial, recreational or accessory facilities may be permitted in such open space area subject to specific grant in the conditional use permit. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space areas shall be established in a manner acceptable to the Town and shall be made a part of the conditions of approval.

l. This section shall be construed to permit any type of housing unit within the development boundaries (i.e., multiple family, single family, garden apartments, condominiums, duplexes, senior housing) subject to specific approval and conditions of this conditional use permit.

m. Where the use is not proposed to be served by public sanitary sewers, the use of private treatment systems pursuant to SPS 83 Wisconsin Administrative Code shall apply, subject to the following:

(1) Private systems serving one dwelling unit shall be privately owned and maintained.

(2) Private systems serving more than one dwelling unit shall be the responsibility of an incorporated Owners Association subject to a maintenance and management agreement. Such agreements shall give the Town the right to inspect all facilities and make repairs at the expense of the Owners Association. In the event that the incorporated Owners Association fails to maintain or make repairs to the private system to the satisfaction of the Town,
the maintenance and management agreement shall grant the Town the
authority to conduct said maintenance or repairs at the expense of the Owners
Association. In the event of nonpayment, all costs incurred shall be placed on
the tax bills of all Owners Association properties on a prorata basis as a
special assessment or special charge.

n. The total number of dwelling units allowed for the project shall be determined by
utilizing the density computation above.

o. The floor area of attached or detached single family dwellings and duplexes shall
not be less than what is required in the applicable zoning district.

p. The architectural style of the buildings may be subject to approval by the Plan
Commission.

q. Subject to specific approval by the Town Board, floor area for multiple dwelling
units may be modified in accordance with table 18-4.

**TABLE 18-4**

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<thead>
<tr>
<th>Efficiency or one bedroom apartment</th>
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<td>Three bedroom unit</td>
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r. The developer shall enter into an appropriate contract with the Town to guarantee
the implementation of the development according to the terms and conditions
established as part of the development plan approval.

7. **BASIS FOR APPROVAL**

The Plan Commission in making its recommendation and the Town Board in making its
determination as to the approval or denial of the land division for planned development
shall give consideration to the purposes and standards in this section and be satisfied as to
the following:

a. That the proposed development is consistent with the spirit and intent of the
chapter, is in conformity with the general character of the Town and would not be
contrary to the general welfare and economic prosperity of the Town or of the
immediate neighborhood, but rather that the benefits from the anticipated
improved design of the resultant development justifies the variation from the
normal requirements of this chapter through the application of this planned
development section.

b. That the size, quality and architectural design of all buildings in the project will
not have an adverse effect upon the general character of the Town and
surrounding neighborhood.
c. That the provisions and facilities of the open space areas being provided is of such quality, size and aesthetic value to justify the approval of the project.

d. That the setbacks shall be maintained along any boundary street of the project area as required by the existing underlying basic district.

c. That no building shall be permitted closer to a side or rear boundary street of the project area as required by the existing underlying basic district.

f. That there shall be no further division of any lot within the development.

g. That deed restrictions or an appropriate contract with the Town assuring implementation of the development according to the above requirements is filed with the Waukesha County Register of Deeds.

h. The proposed site shall be provided with adequate drainage facilities for surface and storm waters.

i. No undue constraint or burden will be imposed on public services such and police and fire protection street maintenance and maintenance of public areas by the proposed development.

j. The proposed site shall be accessible form public roads that are adequate to carry the traffic expected to be generated by the proposed development.

k. The approval of a petition for approval of a Residential Planned Unit Development shall be based on the building, site and operational plans for the development, all other commitments offered as required in regard to project value, character or other factors pertinent to an assurance that the proposed development will be carried out basically as presented for the project.

k-l. If approved, the setback, offset, height, minimum floor area, minimum lot size, density and open space requirements of the Planned Unit Development, in addition to all conditions imposed in the grant of the approval, if any, shall be recorded as a deed restriction on the development lands in a form approved by the Town Board or its designee.

l-m. Any subsequent change or addition to an approved plan shall first be submitted for approval to the Plan Commission and, if in the Commission's opinion such change or addition is not substantial, it may recommend approval to the Town Board without public hearing. If the Plan Commission deems that any proposed change is not acceptable, it shall recommend accordingly to the Town Board. Without limitation to the Plan Commission's right to determine any other change substantial, a change in any of the following respects shall be automatically construed as substantial:

(1) An increase in the number of dwelling units from that shown in the approved comprehensive project plan.

(2) A significant change in the size, value or type of structure from that indicated in the approved comprehensive project plan.
(3) The addition of any principal uses not included in the approved comprehensive project plan.

(4) A change in the basic concept of site development which would significantly alter the relationship of uses or open space to adjoining properties.

SECTION 6: SEVERABILITY

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 7: EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this____________day of__________________, 2018.

TOWN OF DELAFIELD

__________________________
Lawrence G. Krause, Chairman

ATTEST:

__________________________
Mary Elsner, Town Clerk/Treasurer

Published and/or posted this______day of_______, 2018.
ORDINANCE ____

AN ORDINANCE TO CREATE SECTION 18.16 OF THE LAND DIVISION AND DEVELOPMENT CONTROL ORDINANCE OF THE MUNICIPAL CODE FOR THE TOWN OF DELAFIELD, WAUKESHA COUNTY, WISCONSIN

WHEREAS, the Town Board for the Town of Delafield adopted land division regulations for the Town of Delafield and has amended such regulations from time to time, pursuant to Wisconsin Statutes §236.45; and

WHEREAS, the land division regulations, as amended, are codified as Chapter 18 of the Town of Delafield code of ordinances entitled “Land Division and Development Control,” and

WHEREAS, the Town staff have recommended amending the Land Division and Development Control Ordinance to address the issue of residential planned unit development; and

WHEREAS, upon the recommendation of the Town of Delafield zoning administrator this matter was submitted to the Town of Delafield Plan Commission for its consideration at the 236.45(4); and

WHEREAS, following publication of a Class 2 notice as required by Wisconsin Statute Section 236.45(4), a public hearing was held on _____, 2018 before the Town of Delafield Town Board; and

NOW, THEREFORE, the Town Board of the Town of Delafield, Waukesha County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land Division and Development Control,” Section 18.02 entitled, “Definitions,” Subsection (2) entitled, “Specific Words and Phrases,” the definition of “Planned Unit Development (PUD)” is hereby created and inserted among the definitions in alphabetical order, as follows:

Planned Unit Development (PUD): A self contained development in which subdivision and zoning controls are applied to the project as a whole rather than to individual lots, and in which specific benefits are provided to the community as well as the developer and the future citizens who will reside within the development. Within PUD’s, densities are calculated for the entire development, usually permitting a trade-off between clustering of homes and provisions of common open space.

SECTION 2: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land Division and Development Control,” Section 18.02 entitled, “Definitions,” Subsection (2) entitled, “Specific Words and Phrases,” the definition of “Subdivision” is hereby repealed and re-created as follows:
Subdivision. The division of a lot, parcel or tract of land by the owner or his agent for the purpose of sale or building development where: the act of division creates 2 or more parcels or building sites of 5 acres each or less in area; or 2 or more parcels or building sites of 5 acres each or less in area are created by successive divisions of any part of the original property by any person within a period of 5 years; or where the division creates more than three (3) residential parcels or building sites of any size within 5 years. The following shall not constitute a subdivision: cemetery plats, assessor’s plats, or the sale or exchange of parcels of land between owners of adjoining property, if additional lots are not thereby created and the lots resulting are not reduced below the minimum size required by applicable ordinances (but see Section 18.11).

SECTION 3: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land Division and Development Control,” Section 18.03 entitled, “Residential Development Control System,” Subsection (5) entitled, “Allocation,” Subsection (b) entitled, “Threshold,” is hereby repealed and re-created as follows:

(b) Threshold. No residential development permits shall be issued for a subdivision receiving fewer than 7 points in the Plan Commission evaluation.

SECTION 4: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land Division and Development Control,” Section 18.03 entitled, “Residential Development Control System,” Subsection (4) entitled, “Evaluation,” Subsection (b) entitled, “Criteria,” Subsection 12 is hereby created as follows:

12. Planned Unit Development. If the development could be conducted pursuant to this Code either as a planned unit development or a conventional development and the developer chooses to create a planned unit development, the developer will be awarded 2 point(s).

SECTION 5: Chapter 18 of the Town of Delafield Municipal Code entitled, “Land Division and Development Control,” Section 18.16 entitled, “Residential Planned Unit Development” is hereby created as follows:

18.16. Residential Planned Unit Development

1. STATEMENT OF INTENT

A subdivision can be developed as a Residential Planned Unit Development pursuant to this Section. Residential Planned Unit Development is intended to provide for open space/cluster/conservation type residential developments. Such developments incorporate the preservation or enhancement of environmental areas into the development; provide a safe and efficient system for pedestrian and vehicular traffic; provide attractive permanent open spaces as integral part of the development; allow flexibility of overall development design, and ensure adequate standards of planning and construction are met. Residential Planned Unit Development application and review is conducted through the plat approval procedures of this Chapter, in conjunction with the plat, subject to the additional requirements of this Section.

2. MINIMUM ACREAGE

Areas designated as Residential Planned Unit Overlay District shall be under
single corporate ownership or control and shall contain a minimum development area of 20 acres.

3. **BUILDING LOCATION**

   (a) **Setback**  50 feet minimum.

   (b) **Offset**  20 feet minimum.

4. **BASE HEIGHT REGULATIONS**

   (a) **Principal Residence**  30 feet maximum.

   (b) **Accessory Structures**  12 feet maximum.

5. **LOT AREA REGULATIONS**

   (a) Lot size and open space: in accordance with table 18-2 herein

   (b) Lot width: in accordance with table 18-3

   (c) Floor Area:

      | (1) Single Floor | 1,500 square feet |
      | (2) All Other    | See Zoning Code §17.03 5. A.

6. **STANDARDS UNDER WHICH PERMITTED**

Residential Planned Unit Development approval shall not be granted to a development unless all of the following standards are met:

a. Residential Planned Unit Development is permitted in any zoning district that permits residential uses, except the A-1 Agricultural District.

b. The land must be divided by subdivision plat certified survey map, or condominium plat, pursuant to the land division approval procedures of this Chapter.

c. No structures or sewage disposal systems shall be allowed in the Wetland-Floodplain District or within 75’ of the district.

d. A minimum of 40% of the total PUD area shall be set aside as permanent common open space; except the 40% permanent common open space is not required if all lots in the PUD are single-family residential lots, and they each meet a minimum lot size of 5 acres or greater. The overall density shall not exceed the maximum density allowed by applicable laws and ordinances.

e. The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a planned development without the customary division into individual lots and without requiring strict compliance with the specific district regulations, subject to the requirements of this section.

f. Lot size, offset, setback and open space and floor area requirements may be
modified according to the following conditions:

(1) All sanitary provisions must conform to the requirements of the State Department of Industry, Labor and Human Relations, the County Health Department, the local sanitary district and the Town;

(2) The proposed development must be in conformity with any local comprehensive plan, must not be contrary to the general welfare or economic balance of the community and the benefits and amenities of the resultant development must justify the variation from the normal requirements of the district in which it is located;

(3) All other requirements of the Planned Development must be met as set forth in this subparagraph;

(4) The provisions of sections 18.06 and 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;

(5) The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and

(6) Except as specifically provided in subsection (7)(a) or (7)(b), below, the application of these regulations shall be limited to parcels of not less than 20 acres in area.

(7) In areas designated as “Pewaukee Lake Non-Shoreline Redevelopment Overlay District” the following conditions, in addition to those conditions above that are not in conflict, shall apply:

(a) The parcel shall be at least 5 acres in area, and shall be identified in the Land Use Plan as being within the Pewaukee Lake Non-Shoreline Redevelopment Overlay District.

(b) The Plan Commission in making its recommendation and the Town Board in making its decision shall take into consideration the following: that although a planned unit development is permitted in this district, it is the intent that such development be designed to preserve to the greatest extent reasonably possible, lake views and vistas, woodlands, steep slopes, and other natural features.

Table 18-1 shall be utilized to compute the maximum dwelling unit density that may be allowed for the development and shall be referred to as the residential density factor.
TABLE 18-1

<table>
<thead>
<tr>
<th>Code</th>
<th>District</th>
<th>Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>Agricultural Districts</td>
<td>[PUD not permitted]</td>
</tr>
<tr>
<td>A-2</td>
<td>Rural Home District</td>
<td>3.5 acres/dw. unit</td>
</tr>
<tr>
<td>A-3</td>
<td>Suburban Home District</td>
<td>2.75 acres/dw. unit</td>
</tr>
<tr>
<td>C-1</td>
<td>Upland Environmental Corridor Overlay</td>
<td>217,800 s.f./dw. unit</td>
</tr>
<tr>
<td>R-1</td>
<td>Residential District</td>
<td>60,000 s.f./dw. unit</td>
</tr>
<tr>
<td>R-(A)</td>
<td>Residential District</td>
<td>41,000 s.f./dw. unit</td>
</tr>
<tr>
<td>R-2</td>
<td>Residential District</td>
<td>30,000 s.f./dw. unit</td>
</tr>
<tr>
<td>R-3</td>
<td>Residential District</td>
<td>20,000 s.f./dw. unit</td>
</tr>
<tr>
<td>R-L</td>
<td>Residential Lake District</td>
<td>20,000 s.f./dw. unit</td>
</tr>
</tbody>
</table>

h. The specific allowable maximum number of dwelling units shall be computed by dividing the total area allowable for density by the appropriate Residential Density Factor; existing public right-of-way, open space easements and 80% of lands designated as floodplain, wetlands Environmental Corridor or Isolated Natural Resource Area may not be included in the area for density computation.

i. Table 18-2 shall be utilized to determine the absolute minimum lot size and open space per family per lot which may be utilized for the platting of lots in the planned unit development:
<table>
<thead>
<tr>
<th>District</th>
<th>Minimum Lot Size</th>
<th>Minimum Open Space Per Lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>Agricultural District</td>
<td>[PUD not permitted]</td>
</tr>
<tr>
<td>A-2</td>
<td>Rural Home District</td>
<td>60,000 s.f.</td>
</tr>
<tr>
<td>A-3</td>
<td>Suburban Home District</td>
<td>1 acre</td>
</tr>
<tr>
<td>C-1</td>
<td>Upland Environmental Corridor Overlay</td>
<td>Per Underlying Zoning District</td>
</tr>
<tr>
<td>R-1</td>
<td>Residential District</td>
<td>30,000 s.f.</td>
</tr>
<tr>
<td>R-1(A)</td>
<td>Residential District</td>
<td>30,000 s.f.</td>
</tr>
<tr>
<td>R-2</td>
<td>Residential District</td>
<td>25,000 s.f.</td>
</tr>
<tr>
<td>R-3</td>
<td>Residential District</td>
<td>20,000 s.f.</td>
</tr>
<tr>
<td>District</td>
<td>Min. Lot Width</td>
<td>Setback</td>
</tr>
<tr>
<td>------------------</td>
<td>----------------</td>
<td>---------</td>
</tr>
<tr>
<td>A-1 Agricultural District</td>
<td>[PUD not permitted]</td>
<td>[PUD not permitted]</td>
</tr>
<tr>
<td>A-2 Rural Home District</td>
<td>175'</td>
<td>50'</td>
</tr>
<tr>
<td>A-3 Suburban Home District</td>
<td>150'</td>
<td>50'</td>
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</tr>
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<td>120'</td>
<td>50'</td>
</tr>
</tbody>
</table>

TABLE 18-3

j. Table 18-3 shall be utilized to determine the absolute minimum average lot width, setback and offsets which may be utilized for the individual lots.
<table>
<thead>
<tr>
<th>R-3</th>
<th>Residential District</th>
<th>120'</th>
<th>50'</th>
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<tr>
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Up to a maximum of 20% of the area of lands which are zoned Wetland-Floodplain within the project may be used to determine planned development project densities. However, in no case, shall the total area of Wetland-Floodplain zoned lands used in the computation exceed 25% of the net area of the project which is zoned other than Wetland-Floodplain.

k. Adequate guarantee shall be provided for permanent retention of open area resulting from these regulations, either by private reservation for use of the residents within the development or by public dedication. The parcels created as open space in all zoning districts other than the A-1 District shall be owned in common by the residents of the development or by a home owners association and shall not be further divided nor shall they be used for residential purposes. Buildings or structures for noncommercial, recreational or accessory facilities may be permitted in such open space area subject to specific grant in the conditional use permit. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space areas shall be established in a manner acceptable to the Town and shall be made a part of the conditions of approval.

l. This section shall be construed to permit any type of housing unit within the development boundaries (i.e., multiple family, single family, garden apartments, condominiums, duplexes, senior housing) subject to specific approval and conditions of any PUD approval.

m. Where the use is not proposed to be served by public sanitary sewers, the use of private treatment systems pursuant to SPS 83 Wisconsin Administrative Code shall apply, subject to the following:

1. Private systems serving one dwelling unit shall be privately owned and maintained.

2. Private systems serving more than one dwelling unit shall be the responsibility of an incorporated Owners Association subject to a maintenance and management agreement. Such agreements shall give the Town the right to inspect all facilities and make repairs at the expense of the Owners Association. In the event that the incorporated Owners Association fails to maintain or make repairs to the private system to the satisfaction of the Town, the maintenance and management agreement shall grant the Town the authority to conduct said maintenance or repairs at the expense of the Owners Association. In the event of nonpayment, all costs incurred shall be placed on the tax bills of all Owners Association properties on a prorata basis as a
special assessment or special charge.

n. The total number of dwelling units allowed for the project shall be determined by utilizing the density computation above.

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p. The architectural style of the buildings may be subject to approval by the Plan Commission.

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a. That the proposed development is consistent with the spirit and intent of the chapter, is in conformity with the general character of the Town and would not be contrary to the general welfare and economic prosperity of the Town or of the immediate neighborhood, but rather that the benefits from the anticipated improved design of the resultant development justifies the variation from the normal requirements of this chapter through the application of this planned development section.

b. That the size, quality and architectural design of all buildings in the project will not have an adverse effect upon the general character of the Town and surrounding neighborhood.

c. That the provisions and facilities of the open space areas being provided is of such quality, size and aesthetic value to justify the approval of the project.
d. That the setbacks shall be maintained along any boundary street of the project area as required by the existing underlying basic district.

e. That no building shall be permitted closer to a side or rear boundary street of the project area as required by the existing underlying basic district.

f. That there shall be no further division of any lot within the development.

g. That deed restrictions or an appropriate contract with the Town assuring implementation of the development according to the above requirements is filed with the Waukesha County Register of Deeds.

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l. If approved, the setback, offset, height, minimum floor area, minimum lot size, density and open space requirements of the Planned Unit Development, in addition to all conditions imposed in the grant of the approval, if any, shall be recorded as a deed restriction on the development lands in a form approved by the Town Board or its designee.

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Dated this________day of________________________, 2018.

TOWN OF DELAFIELD

Lawrence G. Krause, Chairman

ATTEST:

Mary Elsner, Town Clerk/Treasurer

Published and/or posted this____day of______, 2018.
Plan Commission Report for August 7, 2018

Greenhill Preservation/ Gwenyn Hill Farm
Agenda Item No. 5. A.

Applicant: Kate Began, Greenhill Preservation
Project: Gwenyn Hill Farm
Requested Action: Approval of height increase for a cupola on a proposed barn
Zoning: A-1 Agricultural
Location: W239 N130 Bryn Drive

Report

Ms. Began has presented plans to our building inspector that included a cupola that extended to a height of 50.73 feet whereas the maximum height of a principal building is 45 feet according to Section 17.03 6. A. The Plan Commission can approve exemptions to the overall height requirement for various types of items that extend above a roof line. These include cooling towers, monuments, stacks, scenery lofts ornamental towers, spires and the like. The code also allows for an increase in the height limitation, but not more than 10 feet. If a height increase is allowed, the required setback and offset distances must be increased one foot for every foot the structure exceeds the height limitation. After a review of the exemption section, the applicant requested Plan Commission approval for a height increase of 5.73 feet above the overall height. The barn is located such that the setbacks and offsets are well over the additional 5.73 required to allow the height increase. The purpose of the cupola is to allow additional light into the barn.

Staff Recommendation:

Although the cupola could be considered exempt as an ornamental tower, the Plan Commission is being asked to consider this under the height increase provision. The request is not unreasonable and will add a bit of architectural interest to the barn. The setbacks and offset requirements are met; therefore, I recommend approval of height increase for the installation of the cupola to a maximum height of 50.73 feet above the lowest grade around the perimeter of the barn as presented on sheet number A3.1 to A3.3 prepared by L. Bichler, RA, ALA dated 7/10/18.

Tim Barbeau, Town Engineer
July 31, 2018
Plan Commission Report for August 7, 2018

Betty Moore Property
Agenda Item No. 5. B.

Applicant: Betty Moore

Project: Accessory Building

Requested Action: Approval of garage door height to 10 feet

Zoning: R-1 Residential

Location: N1W29653 Hermie Lane

Report

Section 17.06 3. C. (last sentence) requires that any application for a permit to construct garage doors of non-uniform height or for a door in excess of nine (9) feet shall be subject to Plan Commission approval. Ms. Moore is proposing to construct an accessory building at her residence on Hermie Lane and requesting that the single garage door on the building be 10 feet high. The location of the building on her 4.77 acre lot is approximately 470 feet southwest of the Hermie Lane cul-de-sac. Lands to the south of the proposed accessory building include a tree line and farmland. The building, (not necessarily the garage door) may be seen from the backs of homes on Blodwen Drive. Open space based on existing house and driveway plus accessory building and driveway is 94% (85% required).

Staff Recommendation:

The proposed accessory building is conforming, except for the door height. The purpose for the higher door is to house a recreational vehicle. I recommend approval of the increase in the garage door height to 10 feet.

Tim Barbeau, Town Engineer
July 31, 2018
Plan Commission Report for August 7, 2018

Iron Pipe Development – White Oak Conservancy
Agenda Item No. 5. C.

Applicant: Bill Zach, owner/Developer
Project: White Oak Conservancy subdivision
Requested Action: Approval of Final Plat and Deed Restrictions
Zoning: A-1 PUD
Location: Southwest corner of Cushing Park Road and Abitz Road

Report

Earlier this year, the Plan Commission approved the lot allocation, preliminary plat and deed restrictions for the development of 30 single family residential lots known as White Oak Conservancy. In May, the Town Board approved the Developer’s Agreement and construction of the improvements have been ongoing. Completion of the improvements is anticipated to be no later than mid-September.

The final plat for the proposed subdivision has been submitted and reviewed for conformance to the Town Code requirements. Technical review comments have been provided to the surveyor for incorporation into the final plat. The plat presented is in substantial conformance with the preliminary plat approved by the Town Plan Commission on January 2, 2018. The Town code requires that the Town Board take action on the plat within 60 days of submittal. That date would be August 10, 2018; however, I have received an extension from the developer to approve the plat by August 29, 2018 (next Town Board meeting is August 28, 2018).

Although the Town is not a party to the deed restrictions, there are references in the deed restrictions that may require Town action. Therefore, as stated below, I recommend acknowledgement that the deed restrictions are acceptable.

Staff Recommendation:

I recommend acknowledgement of the deed restrictions as presented, certification to the Town Board that all conditions of the Town Land Division and Development Control Ordinance that were in effect at the time the subdivider submitted the preliminary plat have been met, and approval of the final plat dated May 24, 2018, with the following conditions:

Subject to the developer satisfying all comments, conditions and concerns of the Town Engineer and all reviewing, objecting and approving bodies, which may include but not be limited to the State of Wisconsin Department of Administration per Chapter 236, Wisconsin Statutes and the Waukesha County Parks and Land Use Department.

Subject to the developer reimbursing the Town for all costs and expenses of any type that the Town incurs in connection with this development, including the cost for professional services incurred by the town
(including engineering, legal, planning and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this application, as well as to enforce the conditions in this conditional approval due to violation of the conditions.

Any unpaid bills owed to the Town by the property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed the Town; shall be placed upon the tax roll for the subject property if not paid within thirty (30) days of billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Town, including possible cause for termination of the conditional approval.

Tim Barbeau, Town Engineer
July 31, 2018
WHITE OAK CONSERVANCY


CORPORATE OWNERS CERTIFICATE OF DEED

STATE OF WISCONSIN, COUNTY OF Waukesha

I, Dain S. Williams, an individual, do solemnly swear or affirm that I have read the attached document, that the contents thereof are true, and that I sign this certificate as required by law.

Dain S. Williams

DATE: September 10, 2021

TOWN BOARD APPROVAL CERTIFICATE:

The above document has been approved by the Town Board of the Town of Delafield, Wisconsin, as required by law.

Mayor

DATE: September 10, 2021

PLAN COMMISSION APPROVAL CERTIFICATE:

I, the Plan Commission of the Town of Delafield, do hereby approve the above document, as required by law.

Mayor

DATE: September 10, 2021

CERTIFICATE OF TOWN TREASURER:

I, the undersigned, do hereby certify the above document is in accordance with the laws of Wisconsin.

Mayor

DATE: September 10, 2021

VILLAGE BOARD APPROVAL CERTIFICATE:

I, the undersigned, do hereby approve the above document, as required by law.

Mayor

DATE: September 10, 2021

PLAN COMMISSION APPROVAL CERTIFICATE:

I, the Plan Commission of the Town of Delafield, do hereby approve the above document, as required by law.

Mayor

DATE: September 10, 2021

This instrument drafted by Dain S. Williams

PROJECT DRAFT #144911

THIS INSTRUMENT DRAFTED BY DAIN S. WILLIAMS

DATE: September 10, 2021

SURVEYED BY:

Ruth A. Byrdell

SURVEY FIRM:

SEH Surveying, LLC

PROJECT NUMBER: 144911

SH, 1905 Charles Street, Milwaukee, WI 53207

License No: 30417534

(414) 543-6577

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 actionPerformed by [ME]
DECLARATION OF RESTRICTIONS
FOR
WHITE OAK CONSERVANCY

KNOW ALL PERSONS BY THESE PRESENTS; that Iron Pipe Development, LLC a limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Waukesha, Wisconsin (herein referred to as the “Developer”, which term shall also include the duly authorized agent of the Developer). Developer is the owner of WHITE OAK CONSERVANCY subdivision, being a part of the W 1/2 of Section 31, Town 7 North, Range 18 East, Town of Delafield, Waukesha County Wisconsin, (herein referred to as “White Oak Conservancy”). Developer intends to establish a general plan for the use, occupancy and enjoyment of White Oak Conservancy, and in furtherance of the general purpose set forth in Section A, below, does hereby declare for the mutual benefit of present and future owners of lands in White Oak Conservancy (herein referred to individually as “owner” and collectively as “Owners”), that White Oak Conservancy shall be subject to the following restrictions and covenants.

A. GENERAL PURPOSE

1. The general purpose of this Declaration of Restrictions and Covenants for White Oak Conservancy Subdivision (herein referred to as the “Declaration”) is (1) to promote the harmonious development of White Oak Conservancy into a residential community of high quality while protecting the natural beauty and quality of the environment; (2) to help insure that White Oak Conservancy will become and remain an attractive community; (3) to preserve the open space within White Oak Conservancy; (4) to guard against the erection of poorly designed or proportioned structures; (5) to require harmonious use of materials; (6) to promote the highest and best residential development of White Oak Conservancy; (7) to require the erection of attractive homes in appropriate locations on building sites; (8) to require proper setbacks from streets and adequate free spaces between structures; and (9) in general, by such actions to maintain and enhance the value of investments made by purchasers of properties in White Oak Conservancy.

B. BUILDING RESTRICTIONS

1. All lots in White Oak Conservancy are restricted to the erection of a one story, story and one-half, or Two story single family residence building with a minimum square footage of living space (without regard for basement level areas) as specified in Paragraphs B.2 through B.5, below, and with an attached garage which will accommodate at least two cars.

2. The minimum size of a one story residence shall be 2400 square feet on the first floor.

3. A story and one-half residence shall have a minimum of 2900 square feet in total on both floors and the first floor must have a minimum of 1500 square feet

4. A two story residence shall have a minimum of 2900 square feet in total on both floors and a minimum of 1500 square feet on the first floor.

5. A tri-level residence shall have a minimum of 2900 square feet in total on all three floors with a minimum of 1500 square feet on the main floor.

6. The garage must be attached to the residence directly or by breezeway, or built into the basement of the residence and must be constructed with the residence. The maximum size of the garage shall conform to Town of Delafield (hereinafter referred to as the “Town”)
7. The exterior walls of the residences and attached garage must be constructed of brick, stone, stucco, solid wood siding, Hardiplank/ L.P. Smartside siding, or its equivalents. Certain artificial stone products may be allowed if specifically approved by Developer. Siding materials such as aluminum, vinyl, steel, pressed board, masonite or plywood will not be permitted. Fascia may only be made of the siding materials permitted above for exterior walls (not aluminum or vinyl). Any exposed basement or foundation wall must be covered with masonry veneer, Stucco or its equivalent or the siding materials used on the exterior walls above such exposed wall. The exterior portion of all chimneys shall be of masonry construction or shall have masonry of brick or stone like that used on the house veneer. All roof areas having an appropriate pitch shall be covered with wood shakes or 30 year textured shingles. Textured shingles must be in a “weathered wood” color. All exterior material exchanges must be on an inside corner of the building.

8. All two story and story and one-half residence roofs shall have a minimum pitch of eight feet in height for each twelve feet in length (8/12), except for porch roof or rear dormers on a story and one-half residence. All one story residence roofs shall have a minimum pitch of ten feet in height for each twelve feet in length (10/12). A lower minimum roof pitch may be allowed in special circumstances if approved in writing by Developer.

9. The residence with attached garage, a sodded or seeded lawn and a paved driveway must be completed within one year of the completion of construction.

10. Only one residence may be erected on a lot.

11. The minimum setback from any abutting street right-of-way is 50 feet. The minimum side yard setback is 20 feet. The minimum rear yard setback is 30 feet unless otherwise stated on the final plat.

12. Driveways: The owner of each Lot shall within one year of the date of issuance of an occupancy permit for the construction of a residence on a Lot, install a hard surfaced concrete or asphalt driveway. Said driveway shall extend from the vehicle entry to the garage to an intersection with the public street. The driveway shall have a minimum of a three (3) foot side yard setback in accordance with Town ordinances. If curb cuts are required, it is the responsibility of the Lot owner to determine the location and size of the drive cut in the curb. Both the location and size must meet the requirements and application process of the Town of Delafield. The Lot owner is responsible for the cost of the curb cut.

13. There shall be no outside storage of boats, trailers, buses, commercial trucks, recreational vehicles or other vehicles or items deemed to be unsightly by the Developer or the White Oak Conservancy Homeowners Association, created pursuant to Section C, below.

14. All building plans and the exterior design of each building to be constructed, and all yard grades and stakeout surveys must be approved by Developer in writing prior to application for a building permit. In addition, landscape plans and basic site features such as fences (which shall be of a decorative style for decks and pools; in no event will chain link or privacy fences be allowed), swimming pools (which must be in-ground), retaining walls (which shall be constructed of natural stone or wood timbers only), additions and other temporary or permanent structures or elements contributing significantly to the total environmental effect of White Oak Conservancy are subject to the prior written approval of Developer. Developer’s approval shall be based upon the building and use restrictions contained in this Section B for White Oak Conservancy Subdivision which Owner shall obtain from Developer prior to submitting plans to Developer for approval. Developer may withhold exterior design approval if the design is too similar in appearance to others in close proximity. Following such time that a
principal residence has been constructed upon each lot in White Oak Conservancy, Developer may, but shall not be obligated to, delegate to the White Oak Conservancy Homeowners Association Committee the approval authority contained in this Paragraph 14, to be effective, notice of such delegation shall be recorded in the office of the Register of Deeds for Waukesha County, Wisconsin. Owners are to submit 2 scale able copies of the building plans and survey including landscaping as well as 1 digital copy in the form of a Adobe PDF. All landscape plans can be submitted at a later date must be submitted prior to the start of any landscaping.

15. At the time of construction of a residence the Owner shall install at a location designated by Developer, one electric post lamp with a switched photo-electric control. The design of the post lamp shall be uniform throughout White Oak Conservancy. The post lamp shall be maintained by the Owner in a proper operating manner. If the post lamp is not so maintained, maintenance shall be performed by the White Oak Conservancy Homeowner’s Association, and the cost of such maintenance shall be an assessment against the Owner, payable within 10 days after the date of the assessment.

16. The design of each mailbox/newspaper box shall be uniform throughout White Oak Conservancy and placement shall be subject to approval of the Developer.

17. There shall be no satellite dish antennas having a diameter in excess of 30 inches and no above ground swimming pools. No antenna or satellite dish shall be mounted or installed on any roof or visible from the street side of the residence. Any antenna or satellite dish shall be placed and screened so as to minimize its visibility from roadways and neighboring lots. All swimming pools related pump, heater and filter equipment must be concealed in an enclosure to minimize noise and visibility.

18. Accessory buildings are allowed and cannot be larger than 1% of the lot area. Accessory buildings must be constructed of materials and architecture similar to what is used on the residence. Buildings cannot be located any more than 40 feet from the rear of the residence, must be located no closer to the road than the main residence and a minimum of 20 feet from the side lot line.

19. The Developer, the Town of Delafield and no other, shall have the right and authority to modify the Building Restrictions or to permit variances from application thereof, if in its opinion, the modification or variance is consistent and compatible with the overall scheme of development of White Oak Conservancy, provided that no such modification shall be in violation of local ordinances, or have the effect of revoking an approval previously granted in writing hereunder. Notwithstanding the foregoing, any such modifications or variances shall be at the sole and absolute discretion, aesthetic interpretation and business judgment of the Developer, and this paragraph and any modifications or variances granted hereunder shall not in any way be interpreted (i) as preventing the Developer from requiring at any time, and from time to time, strict compliance with the Building Restrictions, or (ii) as entitling any person to a modification or variance not approved and granted in writing by the Developer and Town. Any changes to the Building Restrictions must also be approved in writing by the Town Plan Commission and Town Board. The restrictions contained herein which benefit the town of Delafield shall have an unlimited and perpetual duration, unless terminated by the Town of Delafield in writing that is duly recorded in the office of the Waukesha County Register of Deeds.

20. Building Pad and Grading on Lots. No owner of any lot, nor any person or persons claiming under the owner, shall or will at any time alter the grade of any Lot or out lot from that which is naturally occurring on that Lot at the time the site development improvements have been completed by the Developer, except to the extent required to comply with the Master Grading Plan or any amendment thereto approved by Town of Delafield on file in the office of the Town of Delafield Clerk, unless and until the
property owner shall first obtain the written approval of the Architectural Control Committee and the Town of Delafield’s Engineer for such grade alterations.

In order to obtain this approval it shall first be necessary for the Lot owner, at his or her expense, to have prepared a grading plan which shows in detail the area to be re-graded, the existing and proposed topography, analyzes the effects on site drainage, and is a plan which does not unreasonably affect an adjacent Lot owner with regards to drainage or their viewing of unreasonable slope treatment.

Each Lot owner must strictly adhere to and finish grade their Lot in accordance with the Master Lot Grading Plan or any amendment thereto approved by the Town of Delafield Engineer on file in the office of the Town of Delafield Clerk. The Developer or Owner’s Association and/or the Town of Delafield and/or their agents, employees or independent contractors shall have the right to enter upon any Lot, at any time, for the purpose of inspection, maintenance, or correction of any drainage condition, and the Lot owner is responsible for cost of the same.

Subdivision grading has been performed with the intention that home construction on each lot takes place within a building pad area consisting of a strip of land extending from the minimum front yard setback line to a line parallel to and 60 feet back from said front yard setback line, with a width of 80 feet. Construction of the home and/or other improvements beyond the limits of such building pad area may result in an increased risk of encountering adverse subsoil conditions.

21. Trees. The Town of Delafield has required the Developer to plant certain shade trees as indicated in the landscape planting plan approved with the final plat of the subdivision (or a type approved by the Town of Delafield). Tree planting on each individual lot is allowed and will be reviewed when the developer is presented a landscape plan for said lot and no tree shall be allowed to be planted closer than and parallel to and approximately five (5) feet from the side yard lot line and 20 feet from the front lot line. The minimum size of such trees at planting shall be approximately two and one-half to three inch (21/2-3) calipers or larger. Each Lot owner shall be responsible for protecting and maintaining, including watering and fertilizing as necessary, any shade trees located on their Lot. The Lot owner shall replace any shade trees that die for any reason at Lot owner’s expense and shall continue to maintain and protect said trees. No trees can be removed in the INRA or other areas designated on the plat unless they are dead, diseased or dying as determined by a qualified professional such as an arborist or landscape architect.

No existing live tree with a diameter of eight (8) inches or more at a height four (4) feet above ground shall, without approval of the Architectural Control Committee be cut down, destroyed, mutilated, moved or disfigured. All existing trees shall be protected during construction and preserved by wells or islands and proper grading in such a manner as may be required by the Developer. Existing live trees with a diameter of eight (8) inches or more at a height four (4) feet above the ground shall be considered by the Architectural Control Committee in granting approval for the location of the house, driveway and any and all other structures on any Lot.

22. Out lots. The subdivision plat contains areas designated as Out lots. Said Out lots are common areas for the Lots in the subdivision. Each Lot in the subdivision shall be deemed to include an equal undivided ownership interest in the Out lots, and each conveyance of a Lot in subdivision shall be deemed to include the conveyance of such undivided interest, whether or not specifically set forth in the instrument of conveyance. Developer further expressly retains the right to grant additional easements for the use of said Out lots in accordance with the provisions of Sections 23 below.

23. Maintenance of drainage easements, ponds, common areas, entrance signage, islands and public walking paths. The Owner’s Association has the responsibility of properly
landscaping and maintaining all common areas, street islands and subdivision entrance signage within the subdivision. Subject to the provisions of paragraph 24 below, the Owner’s Association further has the responsibility of properly maintaining all drainage easement areas located within the individual Lots which are subject to this Declaration of Restrictions and the ponds and all drainage easement areas within common areas. Maintenance of the ponds shall include, but not necessarily be limited to: preservation of the embankments, prevention of erosion above the ponds, around the ponds and downstream there from; and dredging if and when necessary. In the event the Owner’s Association does not properly landscape and/or maintain said items, the Town of Delafield may send written notice to the Association setting forth which of said items the Town of Delafield has determined are not properly landscaped and/or maintained, and stating that the Town of Delafield may perform such landscaping and/or maintenance if not properly done by the Association. The above-referenced notice shall give the Association a minimum of fifteen (15) days to correct the problem, unless the Town determines, in its discretion, that a shorter notice period is appropriate due to a hazardous condition requiring more immediate action. If such landscaping and/or maintenance is not performed within the time granted by the above-referenced notice, and/or if the Town determines, in its discretion, that immediate action, without notice, is required due to an imminent threat of damage to persons or property, the Town of Delafield shall then have the authority, but not the obligation, to undertake such landscaping and/or maintenance, and shall have the right to charge the Lot owners on a pro rata basis for any costs incurred by the Town as a result of said landscaping and/or maintenance. Said costs shall be assessed as special charges pursuant to Section 66.0627 Wis. Stats. If such charges are not paid by any Lot owner within the period fixed by the Town of Delafield, such charges shall become a lien upon the Lot owner’s Lot as provided in Section 66.0627(4), Wis. Stats. And shall be extended upon the tax rolls as a delinquent tax against the Lot owner’s Lot as provided in Section 66.0627, Wis. Stats.

24. Day-To-Day maintenance of drainage easement areas. The day-to-day maintenance of any drainage easement area located on an individual Lot shall be the responsibility of the owners of such Lot. Day to day maintenance includes such items as cutting grass, raking leaves, removing fallen trees and branches, and removing other minor obstructions. This paragraph shall not limit the Town’s authority of enforcement against the Association, as described in Section 23, above.

C. OWNERS ASSOCIATION

1. An unincorporated association (herein referred to as the “Association”) of the Owners of land in White Oak Conservancy (herein referred to individually as “Owner” and collectively as “Owners”), is hereby created for purposes of managing and controlling subdivision Common Areas (as defined below) and performing other duties as set forth herein for the common benefit of the Owners. The Association shall be known as “White Oak Conservancy Homeowners Association”.

2. The term “Common Area” shall include the following areas:
   (a) Outlots 1, 2, 3 and 4 of White Oak Conservancy. No improvements shall be allowed on the Common Area except for landscaping, entrance monuments, walking trails, storm-water management facilities, gas, electric, telephone and other utility lines and facilities. Except as provided herein there shall be no construction or placing of storage areas, signs, billboards or other advertising material or other structures, whether temporary or permanent, or materials on the Common Area. There shall be no commercial or industrial activity undertaken or allowed within the common Area, nor shall any rite of passage across or upon the Common Area be allowed or granted in conjunction with commercial or industrial activity. There shall be no filling, excavating, mining or drilling, removal of top soil, sand, gravel, rock, minerals or other materials nor any building of roads or change in the topography of the Common Area in any manner. Except as may be
necessary for proper maintenance and management, there shall be no
to no removal, destruction or cutting of trees or plants within the Common Area.
There shall be no dumping of trash, garbage or other unsightly or hazardous
material upon or within the Common Area. There shall be no hunting or
trapping within the Common Areas, with the exception of the developers
Bill Zach And Matt Zach who will retain rights to hunt this property with
one guest each for 20 years after acceptance of these Restrictions. Except
as may be necessary in conjunction with landscape maintenance, there shall
be no operation of any type of motorized vehicle within the Common Area.
Anything to the contrary contained herein notwithstanding, Developer and
its duly authorized agents may erect and maintain a marketing sign or signs
within the Common Area until Developer is no longer an Owner of any lots
in White Oak Conservancy.

(b) The grass area, Development Signs, any fencing and landscaping contained
within the public right-of-way of Cushing Park Road and Abitz Road.

(c) All landscaped courts contained within the dedicated streets in White Oak
Conservancy Any portion of the Common Area within a public street right-
of-way may only be improved with the consent of the Town and other
appropriate public authorities. Consent to any such improvement shall not
be considered or construed as an assumption of liability or responsibility for
maintenance, nor shall such consent relieve the Association and/or the
Owners of duties to maintain such improvements.

3. Each lot shall have an appurtenant undivided fractional interest in the Common Area
outlets the numerator of which shall be one and the denominator of which shall be the
total number of lots subject to this Declaration. All deeds and any other conveyances of
any lot in White Oak Conservancy shall be deemed to include such undivided interest in
the common Area outlets, whether or not so specifically stated in any such deed or other
conveyance.

4. The Association shall be governed by a three member Committee, hereinafter referred to
as the “Committee”, which shall be solely responsible for the activities of the
Association. The initial members of the Committee shall be William A. Zach and
Matthew L. Zach.

5. To qualify as a member of the Committee, a person must be either be an Owner or a duly
designated officer or representative of an Owner.

6. So long as fifty percent (50%) or more of the lots in White Oak Conservancy are owned
by Developer, all three members of the Committee shall be appointed by Developer. So
long as twenty percent (20%) or more but less than fifty percent (50%) of the lots in
White Oak Conservancy are owned by Developer, two members of the Committee shall
be appointed by Developer and one member shall be elected as provided herein. So long
as five percent (5%) or more but less than twenty percent (20%) of the lots of the White
Oak Conservancy are owned by Developer, one member of the committee shall be
appointed by Developer and two members shall be elected as provided herein. If less
than five percent (5%) of the lot in White Oak Conservancy White Oak Conservancy are
owned by Developer, all of the members of the committee shall be elected as provided
herein.

7. Each Owner shall be entitled to vote in person or by proxy in elections for selecting
members of the Committee. Owners shall have one vote for each lot owned.

8. The term of office of the initial members of the Committee shall commence upon the
execution hereof and shall continue until three years from signing. Thereafter, the term
of office of members of the Committee shall be for not more than three calendar years. If necessary to ensure continuity of the Committee, term lengths shall be staggered so that at least one, but not more than two, Committee members are elected each year. If any member of the committee shall die, resign, be unable to act or cease to be qualified to be a member, the unexpired term of such member shall be filled by a special election, (or appointment by Developer, if applicable, pursuant to the terms of Paragraph C. 6, above

9. All meetings of the Committee shall be open to Owners. The annual meeting shall be held not less than three days after a written notice of said meeting is given to all Owners. Meetings of the Committee for the purpose of carrying out its duties and powers as set forth herein may be held from time to time without notice. Two members of the Committee shall constitute a quorum. Actions of the Committee shall be taken by majority vote.

10. The Committee shall have the following duties:

(a) To provide for the maintenance of improvements in Common Areas, including the storm water management and drainage facilities located therein; Common Area maintenance shall be performed in accordance with written guidelines and standards established by Developer for maintenance of common areas, as well as generally accepted sound maintenance practices.

(b) To establish dates and procedures for the election of members of the Committee.

(c) To enforce the provisions of Paragraphs B13, B14, B15 and B17, above.

11. The Committee shall have the following powers:

(a) To take such action as may be necessary to cause the Common Areas to be maintained, repaired, landscaped (where appropriate) and kept in good, clean and attractive condition.

(b) To take such actions as may be necessary to cause the storm water management and drainage facilities in White oak Conservancy to be maintained, repaired and kept in a good, clean, functional and attractive condition and in compliance with the requirements of the Town, including an adequate capital reserve fund therefore assessed and collected in accordance with Paragraph C12, below.

(c) To take such action as may be necessary to enforce the provision of Paragraphs B13, B14, B15 and B17, above.

(d) To enter into contracts and to employ agents, attorneys or others for purposes of discharging its duties and responsibilities hereunder; and

(e) To levy and collect assessments in accordance with the provisions of Paragraph C12, below.

12. The Committee shall levy and collect assessments in accordance with the following:

(a) The Owner of each lot shall be subject to a general annual charge or assessment equal to his pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties and discharging its obligations. The pro rata share of an Over of a lot shall be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of lots subject to the Declaration (including added future stages) at the time of the assessment. Said costs shall include, but not be limited to: taxes, insurance, repair, replacement and additional to
the improvements made to the Common Area, equipment, materials, labor, management and supervision thereof, and all costs for the Association reasonably incurred in conducting its affairs and enforcing the provision of the Section C. Waukesha County shall not be liable for any fees or special assessments in the event that it should become the owner of any lots in the subdivision by reason of tax delinquency.

(b) Assessments shall be approved at the duly convened annual meeting of the Committee.

(c) Written notice of an assessment shall be personally delivered to each Owner subject to the assessment or delivered by regular mail addressed to the last known address of Owner.

(d) Assessments shall become due and payable 30 days after the mailing or personal delivery of the notice, as the case may be.

(e) Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, and such unpaid assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until they have been paid in full. The assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the lot against which the assessment was made.

(f) The Committee may record a document with the Register of Deeds in Waukesha County, Wisconsin, giving notice of a lien for any such unpaid assessment and upon payment or satisfaction of the amount due record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document shall be borne by the affected Owner.

(g) Upon application by any Owner, any member of the Committee may, without calling a meeting of the Committee, provide to such Owner a statement in recordable form certifying (1) that the signer is a duly elected or appointed member of the Committee and (2) as to the existence of any unpaid assessments or other amounts due to the Association. Such statement shall be binding upon the Committee and shall be conclusive evidence to any party relying thereon of the payment of any and all outstanding assessments or other amounts due to the Association.

(h) Any lien for assessment may be foreclosed by a suit brought by the Committee, acting on behalf of the Association, in a like manner as the foreclosure of a mortgage on real property.

13. Members of the Committee shall not be liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the members or agents or employees of the Committee. The Association shall indemnify and hold the members of the Committee harmless from and against any and all costs or expenses, including reasonable attorney’s fees, in connection with any suit or other action relating to the performance of their duties hereunder.

14. Failure of the Association or the Committee to enforce any provisions contained in the Section C, upon the violation thereof, shall not be deemed to be a waiver of the rights to do so, or acquiescence in any subsequent violation.

15. During the initial term of the Committee, the Committee shall not have the power to make improvements to the Common Areas in addition to those then in existence (herein referred to as “Additional Improvements”) without the written approval of Developer. After the initial term the Committee shall not have the power to make Additional
Improvements having a cost in excess of Five Thousand dollars ($5,000.00) without the consent of eighty percent (80%) of the ten current Owners.

16. Anything to the contrary contained herein notwithstanding, the Association may not and shall not be dissolved. In the event that the Association is dissolved the duties of the committee and the Association shall become the direct joint responsibilities of the Owners.

D. STORMWATER MANAGEMENT

1. The Owners of Lots in White Oak Conservancy and the Association shall be collectively responsible for maintenance of the stormwater management measures.

2. The responsible parties shall maintain the stormwater management measures installed on all Outlots in accordance with the approved stormwater design prepared by SEH Inc. dated September 25, 2017 and on file in the offices of the Town. Each Owner shall be individually responsible for the maintenance of any portion of a drainage swale that lies within or upon the lot of such Owner.

3. The Town is authorized to access the property to conduct inspections of stormwater practices as necessary to ascertain that the practices are being maintained and operated in accordance with the approved stormwater management plan.

4. The responsible parties, on an annual basis, shall provide maintenance of each stormwater management measure, including but not limited to, removal of debris, maintenance of vegetative areas, maintenance of structural stormwater management measures, aeration equipment and sediment removal.

5. The stormwater retention ponds that have been constructed in White Oak Conservancy are required to assist in the removal of sediment from and detention of storm water. The storm water retention ponds are not intended to be used for swimming or as recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Anyone entering or using the storm water retention ponds for uses which are prohibited does so at their own risk. By acceptance of a deed or other conveyance of a Lot in White Oak Conservancy, each Owner and its respective successors, assigns, heirs and personal representatives thereby waives, to the fullest extent permitted by law, any and all claims for liability against the Developer and the Association, and their respective agents, contractors, employees, officers and directors, for injury or damage to person or property sustained in or about or resulting from the use or existence of the storm water retention ponds. In addition, each Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Developer and the Association, and their respective agents, contractors, employees, officers and directors from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys fees), including those arising from any injury or damage to any person (including death) or property sustained in or about or resulting from the use or existence of the storm water retention ponds.

E. AMENDMENT PROVISIONS

Any of the provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by written document setting forth such annulment, waiver, change, modification or amendment, executed by the Owners of lands having at least seventy-five percent (75%) of the votes in the Association; provided, however, that any such action must also be approved in writing by the Developer so long as it shall be an Owner of any lands in White Oak.
Conservancy. This Declaration and all amendments shall be executed as required by law so as to entitle it to be recorded, and shall be effective upon recording in the office of the Register of Deeds for Waukesha County, Wisconsin.

F. RESERVATION BY DEVELOPER OF RIGHT TO GRANT EASEMENTS

Developer hereby reserves the right to grant and convey easements to the Town and/or to any public or private utility company, upon, over, through or across those portions of any Lot within 10 feet of any lot line and upon, over through or across any portion of any Outlot for purposes of allowing the Town or utility company to furnish gas, electric, water, sewer, cable television or other utility service to any Lot(s); or through any portions of White Oak Conservancy for purposes of facilitating drainage of storm or surface water within or through White Oak Conservancy.

Developer may grant such easements in its own name and without the consent or approval of any lot Owner, until such time as Developer has conveyed legal title to all Lots platted or to be platted in White Oak Conservancy to persons other than a Successor-Developer.

G. DURATION OF RESTRICTIONS

These restrictions and any amendments thereto shall be in force for a term of thirty (30) years from the date this Declaration is recorded, and upon the expiration of such initial 30 year term or any extended term as provided herein, this Declaration shall be automatically extended for successive terms of 10 years each, unless prior to the end of the then-current term a notice of termination is executed by the Owners of at least ninety percent (90%) of all lots subject to this Declaration (and their mortgagees) and is recorded in the office of the Register of Deeds of Waukesha County. These Restrictions shall be deemed to run with the land and shall bind the Owners and their heirs, successors and assigns and be enforceable by any Owner. The Town of Delafield shall have an unlimited and perpetual duration, unless terminated by the Town of Delafield in writing that is duly recorded in the office of the Waukesha County Register of Deeds.

IN WITNESS WHEREOF, I have hereunto set my hand and seal

This ____ day of _______________, 2017.

Iron Pipe Development LLC, (Developer)

By:______________
    William A. Zach, Managing Member