

ORDINANCE NO. 2014-02

**AN ORDINANCE TO CREATE SECTION 17.05 5. AQ.
AND TO REPEAL SECTION 17.06 4. H. 3. a.
OF THE TOWN OF DELAFIELD ZONING ORDINANCE,
TO REGULATE SOLAR ENERGY SYSTEMS AS A CONDITIONAL USE
IN THE TOWN OF DELAFIELD**

WHEREAS, the Town Attorney for the Town of Delafield has recommended that the Town of Delafield Town Board consider adopting regulations to address solar energy systems in a manner that is consistent with State law; and

WHEREAS, the Town of Delafield Town Board has initiated this zoning amendment pursuant to Section 17.10 5. A. and B. of the Town of Delafield Zoning Ordinance, and has referred the matter to the Town Plan Commission pursuant to Section 17.10 5. E. of the Town of Delafield Zoning Code; and

WHEREAS, the Town of Delafield Town Board held a public hearing regarding the proposed amendment on or about March 11, 2014, upon due notice as required by Section 17.10 5. F. and Section 17.10 6. of the Town of Delafield Zoning Code; and

WHEREAS, solar energy systems are subject to particular limitations on municipal review authority, pursuant to Section 66.0401(1m), Wisconsin Statutes, and these limitations require the municipality to consider the facts of an individual situation to make case-by-case restrictions for individual applications, as described for example in the case of *Ecker Brothers v. Calumet County*, 321 Wis. 2d 51 (Ct. App. 2009); and

WHEREAS, by this ordinance the Town of Delafield Town Board intends to allow for individualized consideration of solar energy systems to the extent permitted by State law; and

WHEREAS, the Town Board of the Town of Delafield, having carefully reviewed the recommendation of the Plan Commission, having determined that all procedural requirements and notice requirements have been satisfied, and having given the matter due consideration, and having based its determination on the effect of the zoning amendment on the health, safety and welfare of the community, and having given due consideration to the municipal problems involved as well as the impact on surrounding properties as to noise, dust, smoke and odor, hereby determines that the zoning amendment 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 or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse effect on the property values and general desirability of properties affected by these zoning amendments, and further finds that these amendments 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 Zoning Code entitled, "Zoning Ordinance," Section 17.05, entitled "Conditional Uses," subsection 5., entitled "Conditional Uses Permitted," subsection AQ., is hereby created as follows:

AQ. Solar Energy Systems

1. **Where Permitted.** Subject to the provisions of this subsection AQ., 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.
2. **Conditions Under Which Permitted.**
 - 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. Other Conditions. 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 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.

SECTION 2: Chapter 17 of the Town of Delafield Zoning Code entitled, "Zoning Ordinance," Section 17.06, entitled "Accessory Uses, Accessory Buildings and Other Structures," subsection 4., entitled "Structures Other Than Buildings," subsection H., entitled "Special Use Structures," subsection 3., entitled "Types of Special Uses," subsection a., entitled "Solar Energy Conversion System," is hereby repealed.

~~a. Solar Energy Conversion System. Such as "active" or "passive" solar collection and heating systems.~~

SECTION 3: 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 4: EFFECTIVE DATE.

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

Dated this 25th day of March, 2014.

TOWN OF DELAFIELD



Paul L. Kanter, Town Chair

ATTEST:



Mary Elsner, Town Clerk

Published, and/or posted this 2nd day of October, 2014.

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