

STATE OF WISCONSIN

TOWN OF DELAFIELD

WAUKESHA COUNTY

ORDINANCE NO. 2015-04

**AN ORDINANCE TO CREATE SECTIONS OF 17.05 5. AR OF THE TOWN OF DELAFIELD CODE OF ORDINANCES REGULATING ZONING RELATED TO COMMERCIAL PLANNED UNIT DEVELOPMENT CONDITIONAL USES.**

**WHEREAS**, Chapter 17 of the Town of Delafield Code provides standards regulating zoning for the Town of Delafield; and

**WHEREAS**, from time to time, amendments to the text of the code are required to maintain the code to be current, and

**WHEREAS**, the Plan Commission for the Town of Delafield has recommended that the Town Board revise certain sections of Chapter 17 of the Town of Delafield Code of Ordinances, and

**WHEREAS**, following a Class 2 notice, the Town Board of the Town of Delafield held a public hearing on February 3, 2015 concerning the text amendments herein, as provided for in Section 17.10 of the Town of Delafield Code of Ordinances; and

**WHEREAS**, the Town Board has determined that the adoption of the Plan Commission's recommendation will promote the public health, safety and general welfare of the community, less congestion in the streets and highways; further the orderly layout and use of the land; to secure safety from fire, panic and other dangers; to provide adequate light and air; including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to facilitate the further re-subdivision of larger tracts into smaller parcels of the municipality with a view of conserving the value of the buildings placed upon land; providing the best possible environment for human habitation, and for encouraging the most appropriate use of the land throughout the municipality, 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 DO HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1:**

Chapter 17 of the Town of Delafield Municipal Code entitled "ZONING CODE", subsection 17.05 entitled "CONDITIONAL USES," subsection 5 entitled "CONDITIONAL USES PERMITTED," subsection AR entitled "Commercial Planned Unit development", shall be created as follows:

**AR. 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

2. **Conditions Under Which Permitted.**

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 17-1

District	Title	Minimum Open Space for Development Area	Minimum Permanent Common Open Space	Minimum Individual Lot Size	Minimum Open Space Per Lot
B-2	Shopping Center District	50%	25%	2 acres	25%
B-3	Business Park District	75%	40%	2 acres	25%
M-1	Industrial District	60%	35%	2 acres	25%

- 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 established in a manner acceptable to the Town and shall be made a part of the conditions of approval.
- 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.

1. 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 2: 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 3: Effective Date**

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

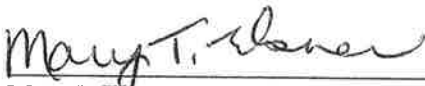
This ordinance passed this 10<sup>th</sup> day of February, 2015.

BY THE TOWN BOARD OF THE  
TOWN OF DELAFIELD:



Paul L. Kanter, Town Chairman

ATTEST:



Mary T Elsner, Town Clerk

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First Draft 12/16/14 TGB  
Second Draft 12/29/14 TGB  
Third Draft 1/16/15 TGB  
Fourth Draft 1/20/15 TGB  
Fifth Draft 2/5/15 TGB