

Enrolled 157-123
PROPOSED ORDINANCE ~~157-37~~

1
2
3 AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING ORDINANCE
4 BY CREATING SECTION 3.12(7) AS IT RELATES TO
5 "PERMITTING OF UTILITY CABINETS"
6 (ZT-1453)
7
8

9 WHEREAS the subject matter of this Ordinance having been approved by the Mukwonago
10 Town Board on June 12, 2002, after Public Hearing and the giving of requisite notice of said
11 hearing, and duly referred and considered by the Waukesha County Park and Planning
12 Commission and a recommendation thereon reported to the Land Use, Parks and Environment
13 Committee and the Waukesha County Board of Supervisors as required by Section 60.61 of the
14 Wisconsin Statutes, and
15

16 WHEREAS, on August 27, 2002 the Waukesha County Board of Supervisors reconsidered the
17 ordinance and referred it back to the Land Use, Parks and Environment Committee for revisions,
18 and
19

20 WHEREAS, revisions are now incorporated in the Town of Mukwonago ordinance 2003-3
21 approved on February 26, 2003.
22

23 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES
24 ORDAIN that Ordinance 2003-3 approved on February 26, 2003, amending the text of the Town
25 of Mukwonago Zoning Ordinance, approved by the Mukwonago Town Board on May 9, 1983,
26 by creating Section 3.12(7) as it relates to "Permitting of Utility Cabinets", and more specifically
27 described in the "Staff Report and Recommendation Addendum Text Amendment" on file in the
28 office of the Waukesha County Department of Parks and Land Use and made a part of this
29 Ordinance by reference (ZT-1453) is hereby approved.
30

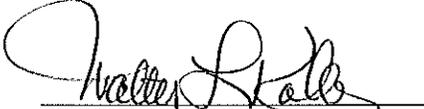
31 BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of
32 this Ordinance with the Town Clerk of Mukwonago.
33

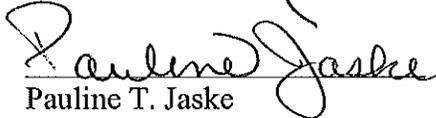
34 BE IT FURTHER ORDAINED that the Ordinance shall be in full force and effect upon passage,
35 approval and publication.
36

37 BE IT FURTHER ORDAINED that all Ordinances inconsistent with or with contravention of
38 provisions of this Ordinance are hereby repealed.

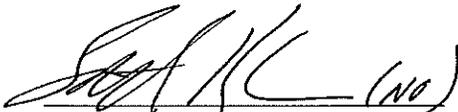
AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING ORDINANCE
BY CREATING SECTION 3.12(7) AS IT RELATES TO
"PERMITTING OF UTILITY CABINETS"
(ZT-1453)

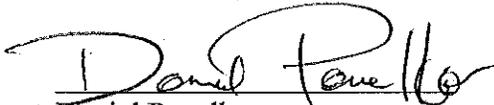
Presented by:
Land Use, Parks, and Environment Committee


Walter L. Kolb, Chair


Pauline T. Jaske

Absent
James Jeskewitz


Scott J. Klein


Daniel Pavelko


Vera Stroud


Matt Thomas

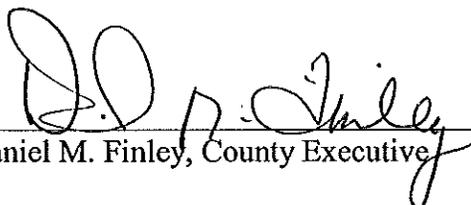
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 3-28-2003, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved:

Vetoed:

Date: 3-31-03, 
Daniel M. Finley, County Executive

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE
STAFF REPORT AND RECOMMENDATION
ADDENDUM TEXT AMENDMENT

DATE: March 10, 2003

FILE NO.: ZT-1453

PETITIONER/OWNER: Mukwonago Town Board
Town of Mukwonago Town Hall
W320 S8315 Beulah Road
Mukwonago, WI 53149

NATURE OF REQUEST:

Text amendments to Section 3.12(7) of the Town of Mukwonago Zoning Ordinance as it relates to permitting of utility cabinets.

OTHER CONSIDERATIONS:

On August 13, 2002, the Waukesha County Board of Supervisors denied the request for the text amendment to the Town of Mukwonago's Zoning Ordinance relating to the permitting of utility cabinets. Subsequently on August 20, 2002, the Town corresponded with the County Board Chairman to ask that the Board reconsider the matter and refer it back to the Land Use, Parks and Environment Committee (LUPE) so that the Town could address the County's issues. The County Board referred it back to the LUPE Committee on August 27, 2002. At the LUPE Committee on September 17, 2002, representatives of the Town Plan Commission and Town Board discussed with the LUPE Committee the County Board's concerns and the matter was referred back to the Town for their reconsideration. In the fall of 2002, the Town discussed the concerns of the County Board and corresponded with all utilities as to what was the maximum size of utility boxes for their individual utilities for single-family residential lots. The response from the utility companies indicated that the maximum size cabinet for an individual parcel for Time Warner Cable would be 32" high by 30" wide by 17" deep; for WE Energies would be 37" high by 36" wide by 30" deep; and for Century Tel would be 60" high by 23-3/4" wide and 11-3/8" deep. Based on the dimensions given to the Mukwonago Town Board by the cable company, WE Energies and the telephone company, they have revised Section 3.12(A) to reflect the maximum size cabinet for their particular utility for single-family residential lots and required that large utility boxes, which exceeded those dimensions, would require Special Use Permits to be granted by the Town. In the Town's review of the Special Use Permit, the Town Board would determine whether appropriate screening should occur of the utility boxes from existing adjacent residential uses, and required the applicant to submit the names and addresses of all contiguous property owners. Also, the utility boxes did not have to conform to the building locational requirements, as the Town Board did not feel it was appropriate to have utility boxes in the middle of the back yard or in the front yard next to the residence, but clustered along lot lines. The Town feels by addressing the individual types and sizes of utility boxes, based upon the industry standard for single-family residences, it would alleviate the fear of three large cabinets on individual lots. The amendment allows the Town Board to require additional screening from adjacent existing residential uses where needed.

Respectfully submitted,


Kathy Moore,
Senior Planner

ORDINANCE NO. 2003-3AN ORDINANCE TO CREATE SECTION 3.12(7)
UTILITY CABINETS IN THE ZONING ORDINANCE
FOR THE TOWN OF MUKWONAGO

WHEREAS, the Town Planner for the Town of Mukwonago has advised the Town that the existing Zoning Ordinance requires a Conditional Use Permit for all utility cabinets; and

WHEREAS, the Plan Commission for the Town of Mukwonago has reviewed this report and found it to be of legitimate concern; and

WHEREAS, the Town Board of the Town of Mukwonago has also reviewed the report and concurs with the findings of the Plan Commission; and

WHEREAS, subject to Section 22.01 of the Zoning Ordinance for the Town of Mukwonago and the provisions of Section 60.62 of the Wisconsin Statutes, the Town Board may from time to time after first submitting a proposal to the Plan Commission for a report and after notice of Public Hearing, amend, supplement, or change the regulations of the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, upon referral of the Petition by the Town Clerk, the Plan Commission for the Town of Mukwonago scheduled a Public Hearing for the Town Board of the Town of Mukwonago and the Plan Commission of the Town of Mukwonago as soon as practical; and

WHEREAS, upon publication of the required notice of the Public Hearing and mailing of said notice for the Public Hearing to all parties-in-interest as required by Section 23.02 of the Zoning Code for the Town of Mukwonago, the Plan Commission for the Town of Mukwonago and the Town Board for the Town of Mukwonago held a Public Hearing on February 6, 2002, March 6, 2002, April 3, 2002, April 24, 2002 and June 5, 2002 at 6:30 p.m., as required by Section 22 of the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, the Plan Commission for the Town of Mukwonago has recommended to the Town Board for the Town of Mukwonago that said Ordinance be approved; and

WHEREAS, the Town Board of the Town of Mukwonago, after carefully reviewing the recommendation of the Town Plan Commission of the Town of Mukwonago, having given the matter due consideration, and having based its determination on the effect of approving the petition on the health, general welfare, safety and economic prosperity of the Town, and has given due consideration into the municipal problems involved, hereby determines that the use will not violate the spirit or intent of the Zoning Ordinance for the Town of Mukwonago, will not be contrary to the public health, safety or general welfare of the Town of Mukwonago, 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 potential adverse affect on the property values and general desirability of the Town.

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

SECTION 1:

The Town of Mukwonago Zoning Ordinance in Section 3, entitled General Provisions, Subsection 3.12, entitled Accessory Buildings and Structures, Subsection 3.12(7), entitled Utility Cabinets, is hereby created to read as follows:

- A. Small Utility Cabinets are defined as pedestals, loaders, junction boxes, cross connect boxes and any similar facilities which relate to the provision of telephone, electric, natural gas, cable television, cable Internet, or similar public services, and which are owned by the providers of such services, and for which there are no more than three (3) such small utility cabinets on any lot, which shall be no greater than the following: One cable company cabinet being no more than 35" (H) x 32" (W) x 17" (D), one (1) electrical facility cabinet being no more than 40" (H) x 38" (W) x 30" (D), and one (1) telephone company cabinet being no more than 60" (H) x 24" (W) x 12" (D).

Small utility cabinets shall be considered a permitted use by right regardless of whether they are in fact accessory to other uses on the property or whether there are principal structures on the lots where they will be located; and will not require a Building Permit; and will not have to meet the setback and offset requirements of this Ordinance; provided that the same shall either (1) be placed within a Town of Mukwonago road right of way in compliance with the Town of Mukwonago Right of Way Ordinance (Ordinance No. 95-2, including any amendments that may be made thereto in the future); or (2) be placed within a public road right-of-way under the jurisdiction of Waukesha County or the State of Wisconsin, in compliance with all applicable laws and subject to obtaining all necessary approvals as required by the governing bodies having jurisdiction; or (3) be placed within a private road right-of-way with the proper easements; or (4) be placed on private property with proper lease or easements.

- B. Large Utility Cabinets are as defined as pedestals, loaders, junction boxes, cross connect boxes and any similar facilities which relate to the provisions of telephone, electric, natural gas, cable television, cable Internet, or similar public services, and which are owned by the providers of such services, and which are larger than a small utility cabinet, as defined above, but less than 6 feet in height. Large utility cabinets shall be considered a special use, will require a Special Use Permit as described below, and Building Permit; and will be prohibited within any public or private right-of-way, except with Town Board approval, except that the Town Board may grant specific approval on a case-by-case basis provided that the same shall either (1) be placed within a Town of Mukwonago road right-of-way in compliance with the Town of Mukwonago Right of Way Ordinance (Ordinance No. 95-2, including any amendments that may be made thereto in the future); or (2) be placed within a public road right-of-way under the jurisdiction of Waukesha County or the State of Wisconsin, in compliance with all applicable laws and subject to obtaining all necessary approvals as required by the governing bodies having jurisdiction; or (3) be placed within a private road right-of-way with the proper lease or easements. Large Utility Cabinets will not have to meet the offset and setback requirements of the zoning district in which any such large utility cabinet is proposed to be located, but shall be subject to Vision Corner Easement requirements, and must not interfere with safe sight distances from public streets accesses. Large utility cabinets may be allowed by the Town

Board in any district as described below and may require screening from existing, adjacent residential uses.

1. Permit Required

A separate Special Use Permit shall be required for each property on which one or more large utility cabinet(s) is (are) proposed. Said Permit shall be applicable solely to the cabinet(s), structure, use and property described in the Permit.

2. Basis of Approval

The Town Board shall base their determination on general considerations as to the effect such grant may have on the health, general welfare, safety and economic prosperity of the Town and specifically on the immediate neighborhood where such use will be located. These considerations shall include the effect on the established character and quality of the areas, physical attractiveness, the demand for related services, the possible hazards, harmful, noxious, offensive or nuisance effect as a result of noise, glare, dust, smoke or odor and other factors as may be appropriate to carry out the intent of this Zoning Ordinance.

3. Fees

The Town Board shall establish fees for the processing and issuance of Special Use Permits on an annual basis by separate resolution.

4. Permit Procedure

a. The Town Board of the Town of Mukwonago is the designated agency, which approves Special Use Permits and further designates the Building Inspector as the official to receive, process, and following approval by the Town Board, issue Special Use Permits.

b. The Permit application shall be made to the Building Inspector on forms provided by the Town and contain the following:

1. The name and addresses of the applicant, the owner of the property, and all contiguous properties.
2. A Site Plan specifying the exact location of the easement or leased area, cabinets, cross boxes, loaders, junction boxes, power pedestals or any other associated facilities.
3. A detailed description of the cabinets and facilities
4. Specifications for screening or fencing, which is to surround the subject cabinet facilities, or a Landscaping Plan, as may be required by the Town Board.
5. A Plan of Operation.
6. Proof of an Easement or Lease Agreement with the property owner.

7. An Erosion Control Permit issued from the Waukesha County Department of Parks and Land Use Land Resource Division, if necessary.
 8. Documentation from the Building Inspector whether the facility requires State approved plans.
 9. An Abandonment Plan, which shall clearly state that within 90 days after discontinuance of the use of the facilities, the access roads, concrete paths and all other appurtenances will be removed and the site will be restored to its natural condition.
 10. A schematic of the cabinet that shows where on the utility cabinets there will be a permanent placard that identifies the carrier and provides an emergency telephone number where accidents or public concerns may be reported.
- c. The Building Inspector shall review the application and if the application is complete and contains all required information shall refer it to the Town Board.
 - d. Following a Public Hearing per Section 23, if deemed necessary by the Town Board, and after the necessary study and investigation, the Town Board shall as soon as practicable render its decision in writing. Such decision shall include an accurate description of the Special Use permitted, of the property on which it is permitted and any and all conditions made applicable thereto or if disapproved, shall indicate the reasons for disapproval. The Board may impose any conditions or exemptions necessary to minimize any burden on any person affected by granting a Special Use Permit.
5. Standard Requirements
Except as may be specifically allowed otherwise by this Ordinance, any such large utility cabinet shall not have to conform to the building location, and open space, requirements of the zoning district in which it is located and be no more than six (6) feet high. Any cabinet more than six (6) feet high may be authorized under the provisions of Section 3.08(4)(T) of this Ordinance.
 6. Modification of Regulations
Requirements applicable to large utility cabinets by the regulation of this Ordinance may be modified and/or waived by the Town Board in their review of an application for a special use if in the Board's opinion they are not appropriate or necessary to the proper regulation of the special use and where such modification would not in the Board's opinion, result in an adverse effect on the surrounding properties.
 7. Termination
When a Special Use Permit has been issued for a large utility cabinet and it does not continue in conformity with the conditions of the original approval, or of the use itself causes the original Special Use Permit to no longer be compatible with the surrounding areas or for similar cause, based upon consideration of the public welfare, a Special Use

SECTION 3.12(7) UTILITY CABINETS

Permit may be terminated or amended by action of the Town Board following a public hearing per Section 23 of this Ordinance.

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 decision of the 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 which shall remain. 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 to those terms that conflict.

SECTION 3: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon passage and posting or publication as required by law following approval by the Waukesha County Board of Supervisors.

Dated this 26th day of February, 2003.

TOWN OF MUKWONAGO

Thomas Stuart
Thomas Stuart, Town Chairman

ATTEST:

Katherine W. Wilson
Katherine W. Wilson, Town Clerk

Published and posted this 27th day of February, 2003.

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-08/27/02

(ORD) NUMBER-1570037

- 1 K. HERRO.....AYE
- 3 D. STAMSTA.....AYE
- 5 J. MARCHESE.....
- 7 J. JESKEWITZ.....AYE
- 9 P. HAUKOHL.....AYE
- 11 K. HARENDA.....AYE
- 13 J. MORRIS.....AYE
- 15 D. SWAN.....AYE
- 17 J. BEHREND.....AYE
- 19 M. SONNENTAG.....AYE
- 21 W. KOLB.....AYE
- 23 P. PRONOLD.....AYE
- 25 K. CUMMINGS.....AYE
- 27 D. PAULSON.....AYE
- 29 M. THOMAS.....AYE
- 31 V. STROUD.....AYE
- 33 D. PAVELKO.....AYE
- 35 C. SEITZ.....AYE

- 2 R. THELEN.....AYE
- 4 H. CARLSON.....AYE
- 6 D. BROESCH.....AYE
- 8 J. DWYER.....AYE
- 10 S. WOLFF.....AYE
- 12 J. GRIFFIN.....AYE
- 14 J. LA PORTE.....
- 16 R. MANKE.....AYE
- 18 D. FANFELLE.....NAY
- 20 M. KIPP.....NAY
- 22 G. BRUCE.....AYE
- 24 A. SILVA.....AYE
- 26 S. KLEIN.....AYE
- 28 P. JASKE.....AYE
- 30 K. NILSON.....AYE
- 32 P. GUNDRUM.....AYE
- 34 R. SINGERT.....AYE

TOTAL AYES-31

TOTAL NAYS-02

CARRIED X

DEFEATED _____

UNANIMOUS _____

TOTAL VOTES-33