

ENROLLED ORDINANCE 161-16

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE PERTAINING
TO SECTION 3.08(1), (2) AND (3) REGARDING CONDITIONAL USE
PROCEDURES AND TERMINATIONS (ZT-1619)

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES
ORDAIN that the Ordinance amending the text of the Town of Mukwonago Zoning Ordinance,
approved by the Mukwonago Town Board on May 9, 1983, pertaining to Section 3.08(1), (2) and
(3) regarding Conditional Use procedures and terminations and more specifically described in the
"Staff Report and Recommendation" on file in the office of the Waukesha County Department of
Parks and Land Use and made a part of this Ordinance by reference (ZT-1619), is hereby
approved.

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

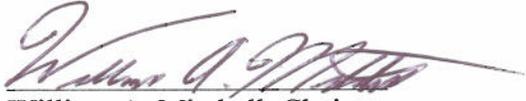
BE IT FURTHER ORDAINED that the Ordinance shall be in full force and effect upon passage,
approval and publication.

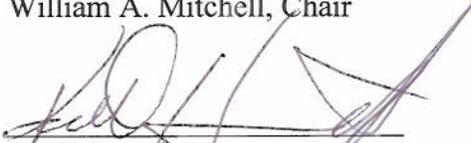
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or with contravention of
provisions of this Ordinance are hereby repealed.

Adopted by the Waukesha County Board of Supervisors on June 27, 2006
Approved by the Waukesha County Executive on July 5, 2006
Kathy Nickolaus, Waukesha County Clerk

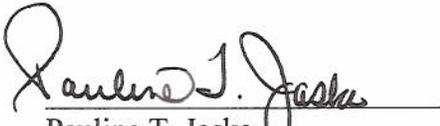
AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE PERTAINING
TO SECTION 3.08(1), (2) AND (3) REGARDING CONDITIONAL USE
PROCEDURES AND TERMINATIONS (ZT-1619)

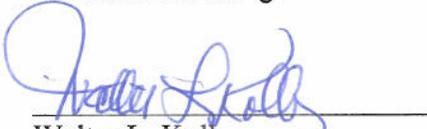
Presented by:
Land Use, Parks, and Environment Committee


William A. Mitchell, Chair


Keith Hammitt


Keith Harenda

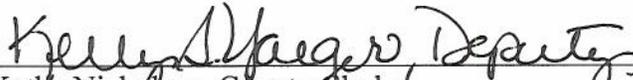

Pauline T. Jaske


Walter L. Kolb

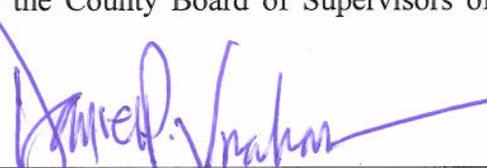

Vera Stroud


Peter M. Wolff

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

Date: 7/3/06, 
Kathy Nickolaus, County Clerk

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

Approved: _____
Vetoed: _____
Date: 7/15/06, 
Daniel P. Vrakas, County Executive

ORDINANCE NO. 2006-6

AN ORDINANCE TO REPEAL AND RECREATE SECTION 3.08(1), (2) AND (3)
IN THE ZONING ORDINANCE
FOR THE TOWN OF MUKWONAGO

WHEREAS, the Town Planner for the Town of Mukwonago has determined that there needs to be more specificity in the application, approval and termination process for Conditional Uses under the provisions of the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, the Plan Commission for the Town of Mukwonago has determined that the current Ordinance can be improved regarding the application and approval process for Conditional Uses and by adding a procedure for voluntary terminations; and

WHEREAS, the Plan Commission for the Town of Mukwonago has directed the Town Planner to put together certain recommendations regarding these issues; and

WHEREAS, the Plan Commission for the Town of Mukwonago has reviewed this report, determined this to be a legitimate concern, directed the Town Staff to put together an Ordinance clarifying these issues; 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 Ordinance 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 May 3, 2006 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

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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 3.08, entitled Conditional Uses, Subsections (1), entitled Approval Required, (2), entitled Basis of Approval, and (3), entitled Determination, is hereby repealed and recreated to read as follows:

SECTION 3.08 CONDITIONAL USES

(1) **Approval required**

Certain uses and situations which are of a special nature, or are so dependent on the actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in this Ordinance of the specific standards, regulations, or conditions which would permit such determination in each individual situation, may be permitted as Conditional Uses, subject to such requirements as determined by the Town Board or specified in this Section.

(2) **Application**

Application for Conditional Use Permits may be made by an individual property owner or group of owners or by a municipality, lake management district, sanitary district or similar agency on behalf of a larger property area where said proposal may benefit a larger group or entire community. Application shall be made in triplicate to the Town Clerk and shall include:

- (A). A map (preferably a topographic map) in triplicate, drawn to a scale of not less than two hundred (200) feet to one (1) inch, showing: the land in question; its legal description and location; location and use *of* all existing buildings, sanitary systems and private water supplies on such land; the high water elevation of any navigable waters within one hundred (100) feet of the boundaries of the land in question; the 100-year floodplain or any wetlands or environmental corridors; the proposed location and use of any buildings; sanitary systems and water supplies on such land and within one hundred (100) feet of the land in question.
- (B). Names and complete mailing addresses, including zip codes, or the owners of all properties within three hundred (300) feet of any part of the land included in the proposed application unless waived in writing by the Plan Commission per Section 3.
- (C). Additional information as may be required by the Town Planner, Town Engineer or the Town Plan Commission.
- (D). A fee, as may be established by the Town Board and periodically modified, shall accompany each application. Such fees shall be paid to the Town of Mukwonago to defray the cost of official notification and posting of the public hearing. Cost incurred by the Town in obtaining legal, planning, engineering, publication, and notice requirements, and other technical and professional advice in connection with review of the Conditional Use applications and preparation of conditions to be imposed on such uses shall be charged to the applicant, and if required by the Town, a pre-payment deposit covering the costs shall accompany the application.
- (E). Where necessary, to comply with certain regulations established by applicable laws, applications shall be required to be submitted to the other governmental bodies having

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jurisdiction which may include the State Department of Natural Resources and/or the U.S. Army Corps of Engineers.

(3) **Public Hearing**

Upon receipt of the application, the foregoing data and fees, the Town Planner shall establish a date for a joint public hearing by the Plan Commission and Town Board, or its designee, and shall publish notice of said hearing once each week for two (2) consecutive weeks in a newspaper of general circulation in the area of the proposed Conditional Use. Notice of the public hearing shall be given by certified mail to the owners of all lands within three hundred (300) feet of any part of the land included in such Conditional Use at least seven (7) days before such public hearing unless waived by the Plan Commission as follows. If the applicant is a governmental entity or group of property owners and the area affected by the proposed Conditional Use is so large such that the Plan Commission finds the certified mail notice to the owners within three hundred (300) feet to be unnecessarily burdensome, the Plan Commission may waive the certified mail notice requirement.

A copy of the notice of public hearing along with pertinent information relative to the specific nature of the matter (copy of application and map) shall be transmitted without delay to any other governmental agencies having jurisdiction by certified mail not less than then (10) days prior to the date of the hearing. Testimony of all interested parties will be received at the public hearing and the Plan Commission shall take action within a reasonable time to either recommend approval or denial of the application along with any recommended conditions of approval or reasons for recommending denial. The action of the Plan Commission, and any conditions made applicable thereto, shall then be sent in writing to the Town Board.

(4) **Final review and approval**

The Town Board shall review the proposal as submitted along with requirements as may be established or recommended by other governing bodies having jurisdiction and the recommendation of the Plan Commission. The Town Board shall approve or deny the application. If the Town Board approves the Conditional Use, any conditions as may be deemed necessary by the Town Board shall be made an integral part of the permit. The applicant shall comply with these conditions, and any failure to comply with the conditions set forth in the permit shall constitute a violation of the terms of the Conditional Use Permit. Such violation shall constitute a violation of this Ordinance and will be subject to prosecution and penalties under the terms of this Ordinance.

(5) **Basis of approval**

The determination of whether to approve or deny or conditionally approve such Conditional Use shall be made by the Town Board, and shall be based on the consideration of whether or not the proposed use will:

- (A) Violate the spirit or intent of the adopted Town of Mukwonago Land Use Plan or this Ordinance;
- (B) Be contrary to the public health, safety or general welfare;
- (C) Be hazardous, harmful, noxious, offensive or a nuisance by reason of appearance, noise, dust, smoke, odor or other similar factors.

Except as may be specifically otherwise provided, any such use shall conform to any building location, height, and area regulations of the district in which it is located. The Town Board may also require compliance with such other conditions as may be deemed necessary by the specific

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situation. Where it is required that building plans, site plans and plans of operation be submitted to the Town Plan Commission or Town Board, such plans shall include such detail as the Town Board and Plan Commission may require, to enable the Town Board and Plan Commission to make their determination.

(6) **Determination**

The action of the Town Board shall include reasons for approval or denial. Any approval shall include: an accurate description of the use permitted, the property on which permitted, and any conditions made applicable thereto. If a Conditional Use Permit is approved, it shall be issued upon compliance with all conditions of approval and the recording of the Conditional Use Agreement in the Waukesha County Register of Deeds Office. The Conditional Use Agreement must be signed by the owner and applicant, and the Town Clerk and Town Chair. The grant of such status shall be applicable solely to the structures, use and property so described. Indication shall also be made on the Zoning Map by the appropriate code number or symbol.

(7) **Application for change or extension of Conditional Use Permits**

Any change, addition, modification, alteration and/or amendment of any aspect of a Conditional Use granted by the Town Board, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises, structures, lands or owners, other than as specifically authorized by the Conditional Use permit conditions, shall require a new permit and all procedures in place at the time must be followed. Unless the Conditional Use permit conditions expressly state otherwise, plans that are specifically required by the Conditional Use order may be amended upon the prior approval of the Plan Commission if the Plan Commission finds the plan amendment to be minor and consistent with the Conditional Use permit. Any change in any plan that the Plan Commission finds in its sole discretion to be substantial shall require a permit, and all procedures in place must be followed.

(8) **Termination of Conditional Use status**

Conditional Use status may be terminated as follows

- (A). The Conditional Use Permit may be terminated on request when the applicant or holder of the Conditional Use and the property owner make a request in writing to the Town Board that the Conditional Use be terminated and the Town Board agrees to terminate said Conditional Use Permit and notice of said termination of the Conditional Use Permit is recorded in the Waukesha County Register of Deeds office; or
- (B). The Conditional Use Permit may be terminated after public hearing and a class 2 notice is published, and notice is provided to the applicant or holder of the Conditional Use Permit and the owner of the subject property, upon the Town Board determining any of the following:
 - 1. The Conditional Use has not continued in conformity with the conditions of the permit.
 - 2. A change in the character of the surrounding area or if the Conditional Use itself causes it to be no longer compatible with surrounding uses.
 - 3. The Conditional Use has been discontinued for a period of twelve (12) consecutive or eighteen (18) cumulative months during a three-year period. A business of seasonal nature shall not be deemed discontinued during periods in which it is normally inactive (i.e., summer camps, ski hills, quarries, marinas, etc.).

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Upon determination or finding by the Town Board that the use must be terminated the owner of the premises shall be required to bring all lands and structures into conformity with the permitted use regulation of the Zoning District in which the property is located within sixty (60) days from such determination, unless such time is extended by mutual agreement of the Town Board and the owner. Upon determination or finding by the Town Board that changes in use or conditions of use are found to be more appropriate by the Town, any changes or required improvements or changes to use or operation as set forth by the Town Board, shall be made within sixty (60) days unless such time is specifically extended by mutual agreement of the Town and owner.

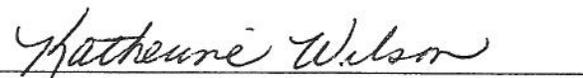
SECTION 2: SEVERABILITY. The several sections of this Ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly 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.

Dated this 17th day of May, 2006.
TOWN OF MUKWONAGO


David Dubey, Town Chair

ATTEST:


Katherine Wilson, Town Clerk

Published and posted this 18th day of May, 2006.



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WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-06/27/06

(ORD) NUMBER-1610018

- 1 K. HERRO.....AYE
- 3 T. ROLFS.....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 W. MITCHELL.....AYE
- 21 W. KOLB.....AYE
- 23 J. TORTOMASI.....AYE
- 25 K. CUMMINGS.....
- 27 D. PAULSON.....AYE
- 29 T. BULLERMANN.....AYE
- 31 V. STROUD.....AYE
- 33 K. HAMMIT.....AYE
- 35 P. MEYER.....AYE

- 2 R. THELEN.....AYE
- 4 R. HUTTON.....AYE
- 6 D. BROESCH.....AYE
- 8 J. DWYER.....AYE
- 10 S. WOLFF.....AYE
- 12 T. SCHELLINGER....AYE
- 14 A. KALLIN.....AYE
- 16 R. STEVENS.....AYE
- 18 B. MORRIS.....
- 20 P. WOLFF.....AYE
- 22 G. BRUCE.....AYE
- 24 B. KRAMER.....AYE
- 26 F. RUF.....AYE
- 28 P. JASKE.....AYE
- 30 K. NILSON.....AYE
- 32 P. GUNDRUM.....AYE
- 34 R. SINGERT.....AYE

TOTAL AYES-32

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS_____

TOTAL VOTES-32