

ENROLLED ORDINANCE 170-3

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE BY REPEALING AND RECREATING SUBSECTION 82-21(d)(4) OF THE TOWN'S CONDITIONAL USE SECTION FOR ANIMAL HOSPITALS AND COMMERCIAL KENNELS TO PROVIDE FOR A SPECIAL EXCEPTION PROCESS FOR SUCH USES (ZT-1803)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Mukwonago Town Board on January 21, 2015, and

WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.61, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Mukwonago Zoning Code, adopted by the Town of Mukwonago on February 27, 2007, is hereby amended to repeal and recreate Subsection 82-21(d)(4) of the Town's Conditional Use section for animal hospitals and commercial kennels to provide for a special exception process for such uses 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-1803, is hereby approved.

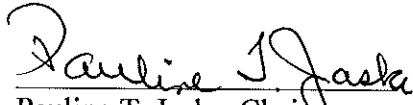
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Mukwonago.

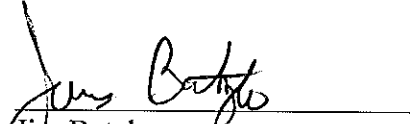
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

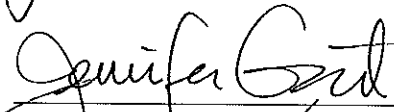
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

Amend The Text Of The Town Of Mukwonago Zoning Code By Repealing And Recreating Subsection 82-21(d)(4) Of The Town's Conditional Use Section For Animal Hospitals And Commercial Kennels To Provide For A Special Exception Process For Such Uses (ZT-1803)


Presented by:
Land Use, Parks, and Environment Committee


Pauline T. Jaske, Chair



Jim Batzko


Jennifer Grant



Keith Hammitt


Eric Highum


William Mitchell


Thomas J. Schellinger

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

Date: 4/28/15, 
Kathleen Novack, County Clerk

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

Approved: X

Vetoed: _____

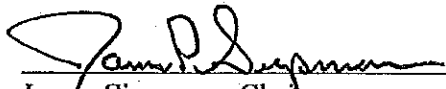
Date: 5-1-15, 
Paul Farrow, County Executive

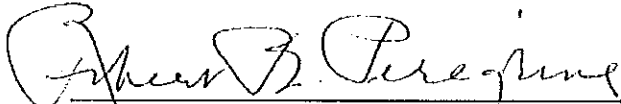
COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Mukwonago Zoning Ordinance hereby recommends approval of ZT-1803 (Text Amendment) in accordance with the attached "Staff Report and Recommendation".

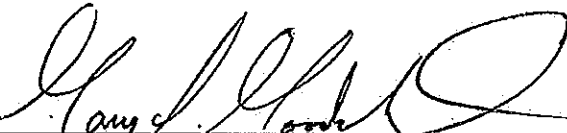
PARK AND PLANNING COMMISSION

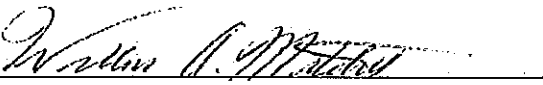
March 19, 2015

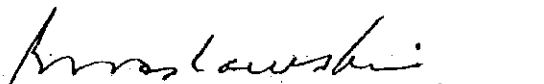

James Siepmann, Chairperson

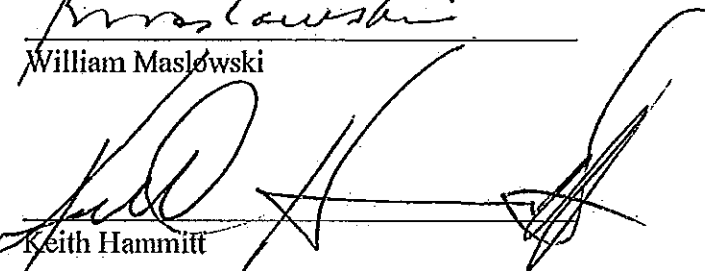

Robert Peregrine

Absent
Richard Morris


Gary Goodchild


William Mitchell


William Maslowski


Keith Hammitt

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

FILE NO.: ZT-1803

DATE: March 19, 2015

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

NATURE OF REQUEST:

Amend Subsection 82-21(d)(4) of the Town of Mukwonago Zoning Code (Town Ordinance 2015-O-24) which is the Town's Conditional Use section for animal hospitals and commercial kennels. The proposed ordinance amendment would provide for a Special Exception process whereby buildings housing such uses could be 50' from property lines, whereas 100' is currently required.

PUBLIC HEARING DATE:

January 7, 2015.

PUBLIC REACTION:

Two residents spoke. One resident questioned the distance of a particular proposed commercial kennel building to their property and expressed opposition to commercial use. Another resident indicated that she did not want to listen to barking dogs and would also be opposed to a proposed commercial kennel building near her property.

TOWN PLAN COMMISSION:

On January 7, 2015, the Town of Mukwonago Plan Commission unanimously recommended adoption of the proposed ordinance.

TOWN BOARD ACTION:

On January 21, 2015, the Town of Mukwonago Board unanimously approved the Zoning Ordinance Amendments as recommended by the Town Plan Commission.

OTHER CONSIDERATIONS:

The Town of Mukwonago recently received a request from a property owner to amend its zoning code relative to commercial dog kennel regulations. Brent and Margaret Nicholson, the subject property owners, proposed two different text amendment options to the Town. The first option was that existing Conditional Use language be amended to allow for kennels within the portion of a building that is at least 100' from a property line. The Nicholson's offered a second option that would provide a special exception process that would allow for kennel buildings to be 50' from property lines, rather than 100'. According to the Town Planner, the Nicholson's recently purchased a 31 acre property to the east of C.T.H. "I" with the goal of opening a commercial kennel. The property previously housed a private stable and there is a large outbuilding on the site. The outbuilding is approximately 55' from the south property line. The desire of the Nicholson's to operate out of that building prompted the request.

The Town expressed a preference for the second option that the Nicholson's proposed and the text amendments being advanced provide for a special exception process that allows for the Town Plan Commission to authorize kennel and animal hospital uses in buildings that are as close as 50' to a property line, provided that certain criteria are considered such as number of animals, building type, sound proofing measures, etc.

STAFF RECOMMENDATION:

It is the opinion of the Planning and Zoning Division Staff that the proposed text amendments be **approved**. Although a particular project prompted this text amendment proposal, the approval of this text amendment does not authorize any particular proposal or project. Instead, the amendment provides a new special exception option for kennel type uses. The Town will preserve the right of the public and neighboring property owners to comment on proposals via the Conditional Use process and has set forth considerations that must be taken into account during the review of any such special exception requests. Staff believes that it will be important for the Town to be diligent in its review of such requests to ensure that nuisance issues such as noise or odor do not become an issue for neighbors of properties housing such kennel type uses.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning and Zoning Manager

Attachment: Town Ordinance 2015-O-24

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STATE OF WISCONSIN TOWN OF MUKWONAGO WAUKESHA COUNTY

ORDINANCE 2015-O-24

AN ORDINANCE TO AMEND SUBSECTION 82-21(d)(4) OF THE TOWN
OF MUKWONAGO MUNICIPAL CODE RELATED TO ANIMAL
HOSPITALS AND COMMERCIAL KENNELS

WHEREAS, the Town Board for the Town of Mukwonago adopted a zoning code for the Town of Mukwonago in 1953 and has amended it from time to time since then; and

WHEREAS, that zoning code is codified as Chapter 82 of the Town of Mukwonago Municipal Code, titled "Zoning;" and

WHEREAS, Brent and Margaret Nicholson own property in the Town of Mukwonago and have submitted a petition to amend Subsection 82-21(d)(4) of the Town of Mukwonago municipal code which relates to animal hospitals and commercial kennels as a conditional use in specified zoning districts; and

WHEREAS, the Town Clerk for the Town of Mukwonago has properly referred the matter to the Plan Commission and to the Waukesha County Park and Planning Commission, pursuant to Section 82-265(c) of the Town of Mukwonago Zoning Code; and

WHEREAS, the Town Board has conducted the necessary investigation, and scheduled a public hearing for the Plan Commission and the Town Board, pursuant to Section 82-265(e)(2) of the Town of Mukwonago Zoning Code; and

WHEREAS, upon due notice as required by Section 82-267(a), the Plan Commission and Town Board held a joint public hearing on January 7, 2015 pursuant to Section 82-265(d) of the Town of Mukwonago Zoning Code; and

WHEREAS, within a reasonable time after the hearing, the Plan Commission has reported its recommendation to the Town Board; and

WHEREAS, the Town Board for the Town of Mukwonago, after carefully reviewing the recommendation of the Plan Commission for the Town of Mukwonago and having given the matter due consideration having determined that all procedural requirements and notice requirements have been satisfied, and having based its determination on the effect of the adoption of the ordinance on the health, safety and welfare of the community and the preservation and enhancement of property values in the community, and having given due consideration to the municipal problems involved hereby determine that the ordinance amendment will serve the public health, safety and general welfare of the Town of Mukwonago, will enhance property values in the Town and will not be hazardous, harmful, noxious, offensive or a nuisance, and will not unduly limit or restrict the use of property in the Town or for any other reason cause a substantial adverse effect on the property values and general desirability of the Town.

NOW, THEREFORE, the Town Board for the Town of Mukwonago, Waukesha County, does hereby ordain as follows:

SECTION 1. Subsection 82-21(d)(4) of Chapter 82 of the Town of Mukwonago municipal code entitled "Zoning," is hereby repealed and recreated to read as follows:

- (4) *Animal hospitals and commercial kennels.* In any district other than residential, restricted business, E-C environmental corridor district, A-E exclusive agricultural district and C-1 conservancy districts.
- a. The building plans, site plans and plan of operation shall be submitted to and approved by the plan commission.
 - b. No such use shall be permitted on a lot of less than three acres.
 - c. No building housing an animal hospital or a commercial kennel shall be closer than 100 feet to the lot line of an adjoining lot in a district permitting residential use except as follows. The plan commission may grant a special exception to allow a lesser offset, but not less than 50 feet or the minimum offset established for the zoning district, whichever is greater, after considering the following factors:
 - (1) The maximum number and type of animals to be kept in the building.
 - (2) The nature of the building including type of construction and measures taken to contain noise associated with the animal hospital or commercial kennel.
 - (3) The presence and type of vegetation between the building and the adjoining property that will help to ameliorate noise associated with the animal hospital or commercial kennel.
 - (4) Any other factor reasonably related to the purposes of this zoning code.

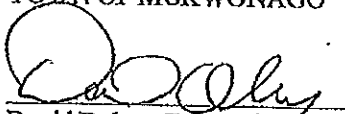
SECTION 2. SUBMITTAL TO WAUKESHA COUNTY. The Town of Mukwonago Town Clerk is directed to send three signed copies of this ordinance to the Waukesha County Clerk for approval of the Waukesha County Board of Supervisors.

SECTION 3. SEVERABILITY. Several sections of this ordinance are declared to be severable and 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 and 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 following approval by the Waukesha County Board of Supervisors.

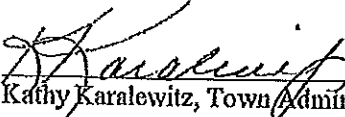
Adopted this 21st day of January 2015

TOWN OF MUKWONAGO



David Dubey, Town Chairman

ATTEST:

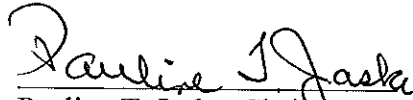


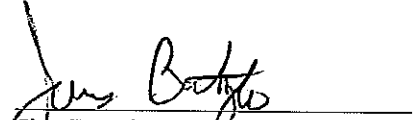
Kathy Karalewitz, Town Administrator/Clerk

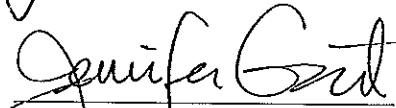
Published and posted this 23 day of January 2015

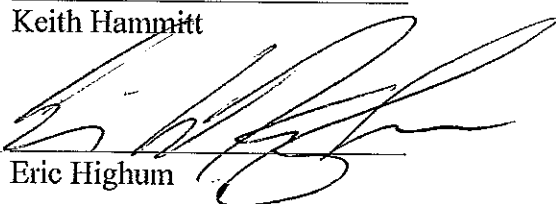
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Date: _____,
Kathleen Novack, County Clerk

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Approved: _____

Vetoed: _____

Date: _____,
Paul Farrow, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-04/28/15

NUMBER-1700002

- | | | | |
|-----------------------|-----|-----------------------|----------------|
| 1 R. KOLB..... | AYE | 2 D. Zimmermann..... | AYE |
| 3 R. MORRIS..... | AYE | 4 J. BATZKO..... | |
| 5 J. BRANDTJEN..... | AYE | 6 J. WALZ..... | AYE |
| 7 J. GRANT..... | AYE | 8 E. HIGHUM..... | AYE |
| 9 J. HEINRICH..... | AYE | 10 D. SWAN..... | AYE |
| 11 C. HOWARD..... | AYE | 12 P. WOLFF..... | AYE |
| 13 P. DECKER..... | AYE | 14 C. PETTIS..... | AYE |
| 15 B. MITCHELL..... | AYE | 16 M. CROWLEY..... | AYE |
| 17 D. PAULSON..... | AYE | 18 L. NELSON..... | AYE |
| 19 K. CUMMINGS..... | AYE | 20 T. SCHELLINGER.... | AYE |
| 21 W. ZABOROWSKI..... | AYE | 22 P. JASKE..... | AYE |
| 23 K. HAMMITT..... | AYE | 24 S. WHITTOW..... | AYE |
| 25 G. YERKE..... | AYE | | |

TOTAL AYES-24

TOTAL NAYS-00

CARRIED _____

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-24