

ENROLLED ORDINANCE 169-23

AMEND THE TEXT OF THE TOWN OF DELAFIELD ZONING CODE TO CREATE SECTION 17.05 5. AQ. AND REPEAL SECTION 17.06 4.H.3.a. OF THE TOWN OF DELAFIELD ZONING CODE TO AMEND SOLAR ENERGY SYSTEMS (ZT-1783)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Delafield Town Board on March 25, 2014, 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 Delafield Zoning Code, adopted by the Town of Delafield on July 20, 1998, is hereby amended to create Section 17.05 5. AQ. and repeal Section 17.06 4.H.3.a. of the Town of Delafield Zoning Code to regulate solar energy systems via a Conditional Use process 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-1783, 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 Delafield.

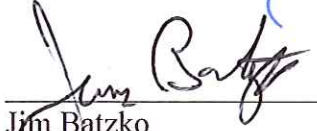
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

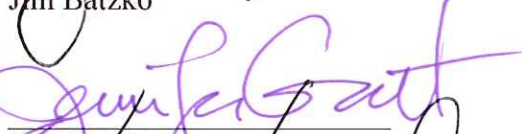
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

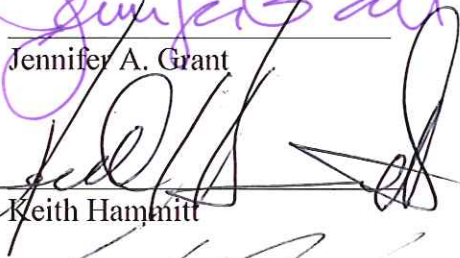
AMEND THE TEXT OF THE TOWN OF DELAFIELD ZONING CODE TO CREATE SECTION 17.05 5. AQ. AND REPEAL SECTION 17.06 4.H.3.a. OF THE TOWN OF DELAFIELD ZONING CODE TO AMEND SOLAR ENERGY SYSTEMS (ZT-1783)

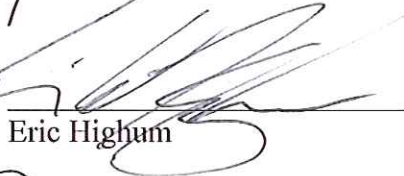
Presented by:  
Land Use, Parks, and Environment Committee

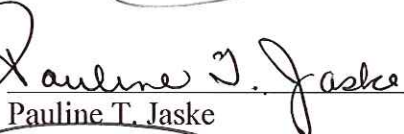
  
Walter L. Kolb, Chair

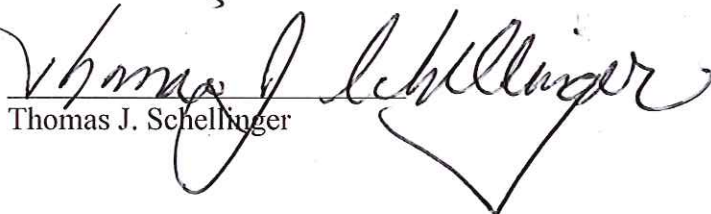
  
Jim Batzko

  
Jennifer A. Grant

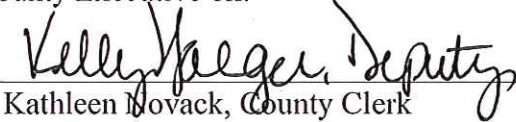
  
Keith Hammitt

  
Eric Highum

  
Pauline T. Jaske

  
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: July 1, 2014,   
Kathleen Novack, County Clerk

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

Approved:

Vetoed:

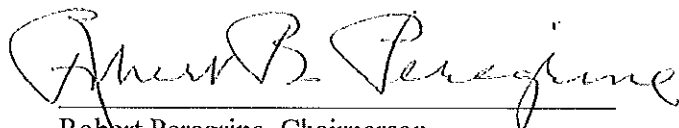
Date: 7-1-14,   
Daniel P. Vrakas, County Executive

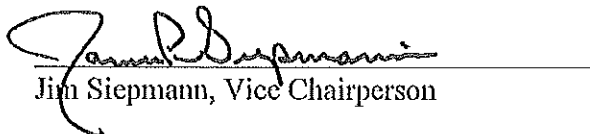
COMMISSION ACTION

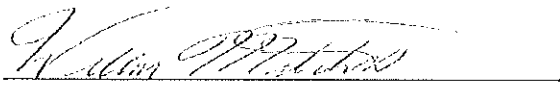
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Delafield Zoning Code hereby recommends approval of (ZT-1783 Town of Delafield Board) in accordance with the attached "Staff Report and Recommendation".

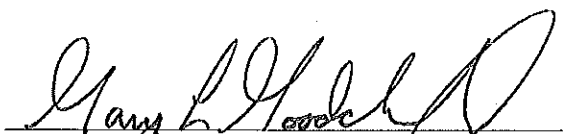
PARK AND PLANNING COMMISSION

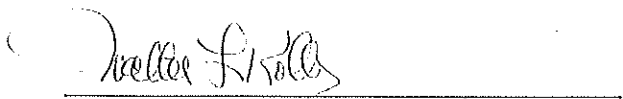
May 15, 2014

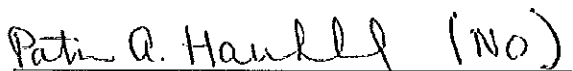
  
Robert Peregrine, Chairperson

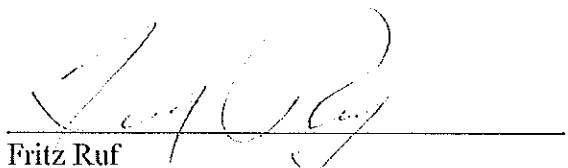
  
Jim Siepmann, Vice Chairperson

  
William Mitchell

  
Gary Goodchild

  
WALTER L. KOHL

  
Pat Haukohl

  
Fritz Ruf

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

**FILE NO.:** ZT-1783

**DATE:** May 15, 2014

**PETITIONER:** Town of Delafield Board  
Town of Delafield Hall  
N14 W30782 Golf Road  
Delafield, WI. 53018

**NATURE OF REQUEST:**

Text amendment to create Section 17.05 5. AQ. and repeal Section 17.06 4.H.3.a. of the Town of Delafield Zoning Code to regulate solar energy systems via a Conditional Use process.

**PUBLIC HEARING DATE:**

March 11, 2014.

**PUBLIC REACTION:**

None.

**TOWN PLAN COMMISSION:**

On January 7, 2014, the Town of Delafield Plan Commission recommended in favor of the proposed amendment.

**TOWN BOARD ACTION:**

On March 25, 2014, the Town of Delafield Board voted to approve the proposed ordinance, as recommended by the Town Plan Commission.

**BACKGROUND AND SUMMARY OF CHANGES**

The Town of Delafield is proposing text amendments to the Town of Delafield Zoning Code in order to revise ordinance language to be consistent with statutory guidelines for how solar energy systems can be regulated. The current Town Ordinance provides a process for consideration of solar energy systems within the "Structures other than Buildings" section, which also addresses other miscellaneous structures such as retaining walls, signs and swimming pools. The proposed ordinance would remove solar energy systems from that section of the code and the Conditional Use section of the ordinance would be amended to allow for such systems as an additional type of use that can be considered via the Conditional Use process.

In proposing this change, the Town would eliminate language that is now inconsistent with statutory requirements relative to the regulation of solar energy systems. Specifically, the existing special use language describes that the Town Board can base its approval determination upon such factors as effect on property values and physical attractiveness. State law now allows for only a narrow range of issues that can be considered in placing conditions on a system or that may be used as the basis for a denial of a system. The Town is specifying that such systems are exempt from conventional zoning provisions such as height, location, etc. unless enforcement of such standards will serve to protect public health or safety. Ordinance language also specifies that imposed restrictions cannot significantly increase the cost of the system or significantly decrease its efficiency and imposed restrictions must allow for an alternative system of comparable cost and efficiency.

The County similarly requires a Conditional Use process for solar energy systems that produce more power than is used on a given site. The County zoning ordinances allow solar energy systems that only produce power for on-site use via an administrative Zoning Permit process.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that the proposed ordinance to amend the Town of Delafield Zoning Ordinance be approved, as presented. The proposed amendments will bring the Town Ordinance into compliance with the statutory requirements for regulation of such systems. The proposed Conditional Use process will ensure that proposed solar energy systems are not harmful to public health and safety.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager

Attachment: Town Ordinance

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ORDINANCE NO. 2014-02

**AN ORDINANCE TO CREATE SECTION 17.05 5. A.Q.  
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.

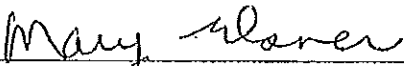


Dated this 25<sup>th</sup> day of March, 2014.

TOWN OF DELAFIELD

  
\_\_\_\_\_  
Paul L. Kanter, Town Chair

ATTEST:

  
\_\_\_\_\_  
Mary Elsner, Town Clerk

Published and/or posted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-06/24/14

(ORD) NUMBER-1690023

- 1 R. KOLB.....AYE
- 3 R. MORRIS.....AYE
- 5 J. BRANDTJEN.....AYE
- 7 J. GRANT.....AYE
- 9 J. HEINRICH.....
- 11 C. HOWARD.....AYE
- 13 P. DECKER.....AYE
- 15 W. KOLB.....AYE
- 17 D. PAULSON.....AYE
- 19 K. CUMMINGS.....AYE
- 21 W. ZABOROWSKI.....AYE
- 23 K. HAMMITT.....AYE
- 25 G. YERKE.....AYE

- 2 D. Zimmermann.....AYE
- 4 J. BATZKO.....AYE
- 6 J. WALZ.....AYE
- 8 E. HIGHUM.....AYE
- 10 D. SWAN.....AYE
- 12 P. WOLFF.....AYE
- 14 C. PETTIS.....AYE
- 16 M. CROWLEY.....AYE
- 18 L. NELSON.....AYE
- 20 T. SCHELLINGER....AYE
- 22 P. JASKE.....AYE
- 24 S. WHITLOW.....AYE

TOTAL AYES-24

TOTAL NAYS-00

CARRIED\_\_\_\_\_

DEFEATED\_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-24