

ENROLLED ORDINANCE 170-2

AMEND THE TEXT OF THE TOWN OF DELAFIELD ZONING CODE TO CREATE  
SECTION 17.05 5. AR TO CREATE A COMMERCIAL PLANNED UNIT  
DEVELOPMENT CONDITIONAL USE OPTION (ZT-1804)

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 February 10, 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 Delafield Zoning Code, adopted by the Town of Delafield on July 20, 1998, is hereby amended to create section 17.05 5. AR to create a Commercial Planned Unit Development Conditional Use option, 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-1804, is hereby approved.

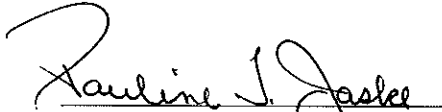
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Delafield.

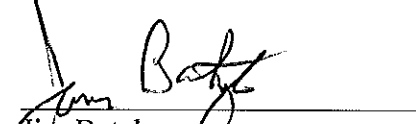
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

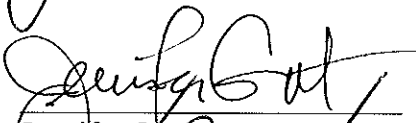
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.


Amend The Text Of The Town Of Delafield Zoning Code To Create Section 17.05 5. AR To  
Create A Commercial Planned Unit Development Conditional Use Option (ZT-1804)

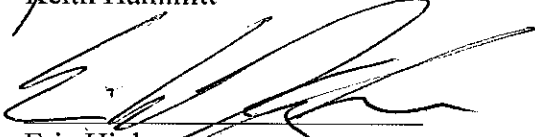
Presented by:  
Land Use, Parks, and Environment Committee

  
Pauline T. Jaske, Chair

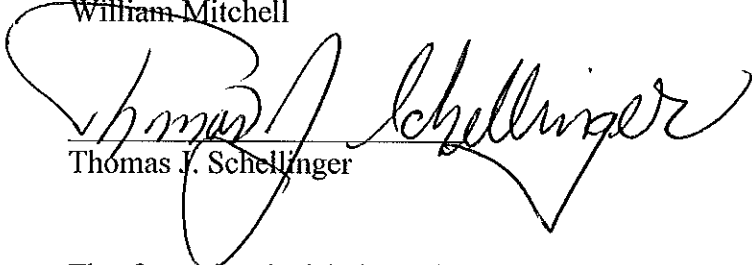
  
Jim Batzko

  
Jennifer Grant

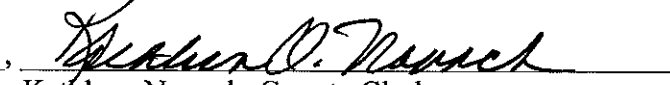
  
Keith Hammitt

  
Eric Highum

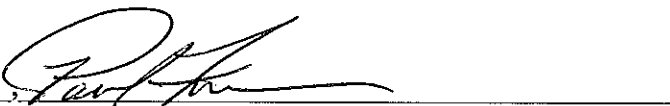
  
William Mitchell

  
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:

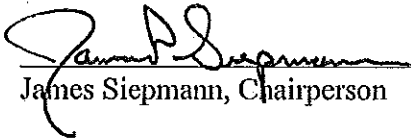
Approved: X  
Vetoed: \_\_\_\_\_  
Date: 5-1-15,   
Paul Farrow, County Executive

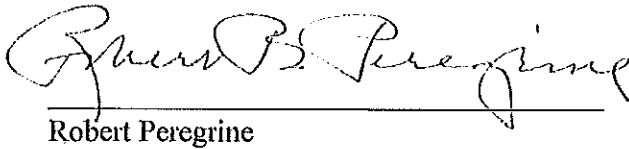
**COMMISSION ACTION**

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Delafield Zoning Code hereby recommends approval of ZT-1804 (Town of Delafield Board) in accordance with the attached "Staff Report and Recommendation".

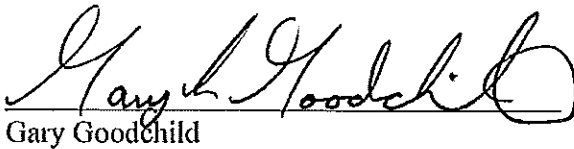
**PARK AND PLANNING COMMISSION**

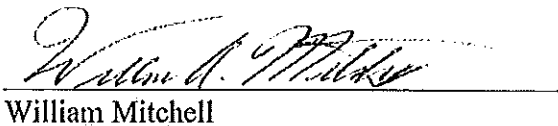
**March 19, 2015**

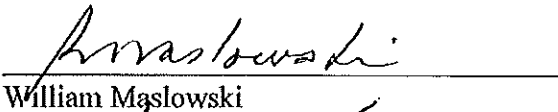
  
James Siepmann, Chairperson

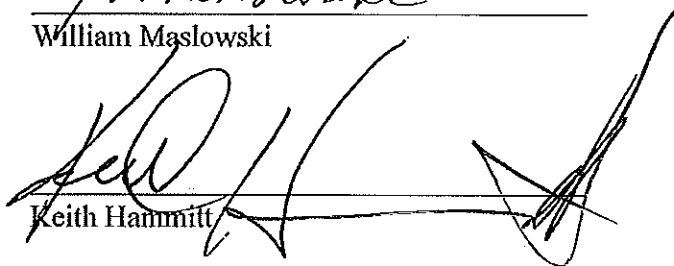
  
Robert Peregrine

*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-1804

**DATE:** March 19, 2015

**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. AR of the Town of Delafield Zoning Code to create a commercial Planned Unit Development Conditional Use option.

**PUBLIC HEARING DATE:**

February 3, 2015

**PUBLIC REACTION:**

None.

**TOWN PLAN COMMISSION:**

On February 3, 2015, the Town of Delafield Plan Commission recommended in favor of the proposed amendment.

**TOWN BOARD ACTION:**

On February 10, 2015, the Town of Delafield Board approved the proposed ordinance, as recommended by the Town Plan Commission.

**BACKGROUND AND SUMMARY OF CHANGES**

The Town of Delafield is proposing to amend the Town Zoning Ordinance to create a new Commercial Planned Unit Development (PUD) Conditional Use option. The amendment would allow for more flexibility for unified commercial or industrial development projects that might come forward in the form of a business or industrial park. The proposed PUD option significantly reduces the required open space required per lot in the three zoning districts where such PUDs would be available (B-2, Shopping Center District, B-3 Business Park District and M-1 Industrial District). For instance, the Town's B-3 Business Park District open space requirements would be reduced from 80% per lot to 25% per lot in a PUD setting.

In addition to amending open space per lot, the new PUD option requires a specified amount of common open space per development and also requires developments to have an overall amount of open or green space. The changes would not significantly alter the overall amount of open space required for a given project. As noted above, the B-3 District currently requires 80% open space, whereas the changes would require a minimum of 75% open space for an entire development within said district. Lowland areas (wetlands, floodplains) and storm water facilities can be counted in arriving at required open space. Therefore, on some sites, and on the site that prompted this new option, the actual developable area is not greatly impacted by the required open space requirements. It is expected that this option would be fairly lightly utilized, as relatively little land within the Town is planned or zoned for large scale commercial or industrial development.

Planning and Zoning Staff has recommended to the Town Planner that two items be clarified or modified within this proposed section in the future. The first is a statement that indicates that the PUD option is only available for parcels of 10 or more acres. We feel that language should clarify that the parent parcel or overall development area shall be a minimum of 10 acres, so as to avoid confusion relative to subsequent individual business park lots within developments. Second, the proposed language suggests that change in ownership of lands shall necessitate a formal Conditional Use amendment. The Town Planner has confirmed that the intent of the Town was that this ownership stipulation is to refer to the transfer of the development lands, as a whole, rather than sale of individual parcels within a business park development. Planning & Zoning Staff feel that if a PUD is well written relative to development standards and expectations, a transfer of ownership of the development site as a whole need not necessarily rise to the level of a Conditional Use amendment. However, in the interests of moving the larger text amendment ahead further, Staff simply recommends that the Town re-visit these issues in the future. A large office development project will not be able to proceed without the approval of these amendments.

**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. The proposed text amendments will allow for a relaxation of individual building site open space requirements while still ensuring that ample green space is provided in business park settings. The amendments will provide a mechanism that will make unified or business park type developments more feasible on lands that are planned and zoned appropriately.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager

Attachment: Town Ordinance

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STATE OF WISCONSIN

TOWN OF DELAFIELD

WAUKESHA COUNTY

ORDINANCE NO. \_\_\_\_\_

**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.

- i. 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

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-04/28/15

NUMBER-1700007

1 R. KOLB.....AYE  
3 R. MORRIS.....AYE  
5 J. BRANDTJEN.....AYE  
7 J. GRANT.....AYE  
9 J. HEINRICH.....AYE  
11 C. HOWARD.....AYE  
13 P. DECKER.....AYE  
15 B. MITCHELL.....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.....  
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. WHITTOW.....AYE

TOTAL AYES-24

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-24