

ENROLLED ORDINANCE 179-58

APPROVE TOWN OF DELAFIELD ORDINANCE NO. 2024-07 THAT REPEALS SECTION  
17.10 (5)(H) OF THE TOWN OF DELAFIELD ZONING CODE RELATING TO PROTESTS  
OF ZONING CODE CHANGES OR AMENDMENTS  
(RZ152)

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 September 10, 2024; and

WHEREAS, Town of Delafield Ordinance No. 2024-07 repeals and recreates Section 17.10 (5)(H) of the Town of Delafield Zoning Code relating to protests of zoning code changes or amendments; 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 60.62, Wis. Stats.

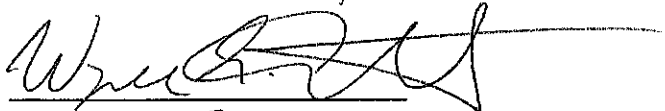
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that Town of Delafield Ordinance No. 2024-07 which repeals and recreates Section 17.10 (5)(H) of the Town of Delafield Zoning Code relating to protests of zoning code changes or amendments as more specifically described in the "Staff Report 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, 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.

APPROVE TOWN OF DELAFIELD ORDINANCE NO. 2024-07 THAT REPEALS SECTION 17.10 (5)(H) OF THE TOWN OF DELAFIELD ZONING CODE RELATING TO PROTESTS OF ZONING CODE CHANGES OR AMENDMENTS (RZ152)

Presented by:  
Land Use, Parks, and Environment Committee


  
Christine M. Howard, Chair

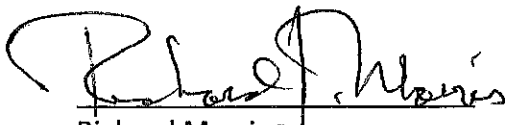
  
Wayne Euclide

  
Robert L. Kolb

**Absent**

Johnny Koremenos

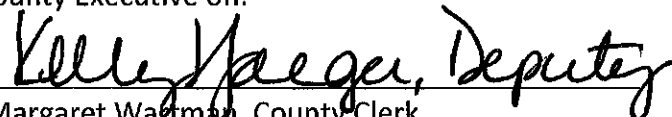
  
Brian Meier

  
Richard Morris

**Absent**

Steve Styza

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

Date: 12/20/2024,   
Margaret Wartman, County Clerk

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

Approved: X

Vetoed: \_\_\_\_\_


Date: 12/20/2024,   
Paul Farrow, County Executive


COMMISSION ACTION

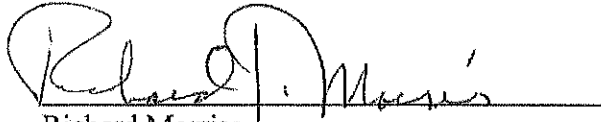
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Text of the Town of Delafield Zoning Code hereby recommends approval of **RZ152 (Town of Delafield Board)** in accordance with the attached "Staff Report and Recommendation".

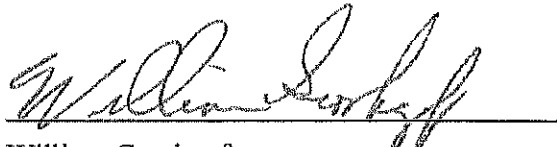
PARK AND PLANNING COMMISSION


November 21, 2024

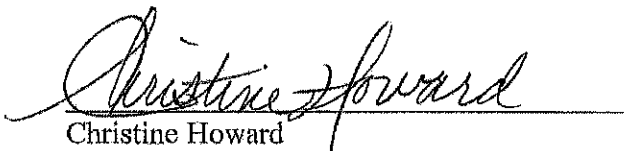
  
Robert Peregrine, Chairperson

  
James Siepmann

  
Richard Morris

  
William Groskopf

  
Gary Szpara

  
Christine Howard

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

**FILE NO.:** RZ152  
**DATE:** November 21, 2024  
**PETITIONER:** Town of Delafield Board  
W302 N1254 Maple Ave.  
Delafield, WI 53018

**REQUEST:**  
Repeal Section 17.10 (5)(H) of the Town of Delafield Zoning Code relating to protests of Zoning Code changes or amendments.

**PUBLIC HEARING DATE:**  
September 3, 2024

**PUBLIC REACTION:**  
None

**TOWN PLAN COMMISSION ACTION:**  
The Town of Delafield Plan Commission, at their meeting of September 3, 2024, unanimously recommended approval of the request.

**TOWN BOARD ACTION:**  
The Town Board of Delafield, at their meeting of September 10, 2024, unanimously recommended approval of the request per Town Ordinance No. 2024-07.

**COMPLIANCE WITH THE COUNTY LAND DEVELOPMENT PLAN:**  
This amendment bears no direct relationship to the town or county land use plans.

**OTHER CONSIDERATIONS:**  
The Town of Delafield is proposing to repeal a section of the town zoning code that relates to protests of zoning amendments. This amendment has been advanced in reaction to recent changes in state law that now prohibit units of government from requiring a standard higher than a simple majority vote to approve zoning text or map amendments. State law had previously allowed for a ¾ vote standard for approval of zoning amendments when a protest petition meeting certain standards was filed. The town is seeking to come into compliance with the new state law ahead of the effective date of the law change, which is January 1, 2025.

**STAFF RECOMMENDATION:**  
It is the opinion of the Planning and Zoning Division Staff that this request be **approved**. This amendment brings the Town of Delafield Zoning Code into compliance with recent state law changes that require a simple majority vote for zoning changes.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager

Attachment: Town of Delafield Ordinance No. 2024-07  
JF:kb

STATE OF WISCONSIN

TOWN OF DELAFIELD

WAUKESHA COUNTY

ORDINANCE NO. 2024-07

AN ORDINANCE TO REPEAL SECTION 17.10 5H OF THE TOWN OF  
DELAFIELD MUNICIPAL CODE RELATING TO PROTESTS OF ZONING CODE  
CHANGES OR AMENDMENTS

WHEREAS, the Town of Delafield has adopted a Zoning Code pursuant to the provisions of Chapters 60 and 62 of the Wisconsin Statutes; and

WHEREAS, the Town of Delafield has adopted the Zoning Code for the Town of Delafield to be consistent with the provisions contained within the Wisconsin Statutes, and

WHEREAS, for many years Wisconsin Statutes Section 62.23(7)(d)(2m) (applicable to the Town per 61.35 and 60.62 Wis. Stats.) contained provisions allowing for a protest of proposed changes or amendments, based upon a protest signed by specific members of the Town, requiring a  $\frac{3}{4}$  vote of the Town Board for approval of the changes or amendments, and

WHEREAS, the provisions of Section 17.10 5H of the Zoning Code of the Town of Delafield contain the same provision for a protest against a change or amendment to the Zoning Code, consistent with language previously contained in Section 62.23(7)(d)(2m) Wisconsin Statutes, and

WHEREAS, in 2023 Wisconsin Act 16, the State of Wisconsin has preempted municipal authority to require a supermajority vote in zoning decisions by the creation of Wisconsin Statutes Section 66.10015(3) which says all zoning amendments are adopted by a simple majority vote of the quorum; and

WHEREAS, 2023 Wisconsin Act 16 provides, in Section 25, that the change which creates 66.10015(3) that preempts local authority over voting requirements for zoning ordinances takes effect January 1, 2025; and

WHEREAS, 2023 Wisconsin Act was enacted on June 23, 2023 and published on June 23, 2023, and

WHEREAS, the Wisconsin's adoption of 2023 Wisconsin Act 16 will preempt the Town's actions in this area starting in January 2025, and

WHEREAS, the Town of Delafield Town Board seeks to promptly come into compliance with the provisions of Wisconsin Act 16 well in advance of the mandatory deadline to do so; and

WHEREAS, the changes made by the Wisconsin legislature reflects a policy change to favor the rights of property owners, and the Town Board is not in a position to second guess the public policies favored by the State in this area; and

WHEREAS, the Plan Commission of the Town of Delafield has recommended to the Town Board of the Town of Delafield that the Town Board repeal Section 17.10 5H, to remain consistent with the provisions of the Wisconsin Statutes, and

WHEREAS, a public hearing was conducted by the Town Board of the Town of Delafield on September 3, 2024, after due notice was provided pursuant to Section 17.10 5F of the Town of Delafield Zoning Code and Wisconsin Statutes Section 62.23(7)d and

WHEREAS, upon publication of a Class 2 Notice per Chapter 985 Wisconsin Statutes once each week for two consecutive weeks prior to the hearing, as required by Wisconsin Statutes Section 62.23(7)(d), the Town Board and Town Plan Commission held a joint public hearing to consider the repeal of Section 17,10 5H; and

WHEREAS, following the joint public hearing, the Town Plan Commission recommended to the Town Board that the ordinance be adopted as proposed; and

WHEREAS, having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such zoning amendment on the health, safety and welfare of the community, and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved as well as the impact on the surrounding properties as to noise, dust, smoke and odor, and others, hereby determine 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 and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the neighborhoods within the Town, and will be consistent with the Town of Delafield Comprehensive Plan.

WHEREAS, the Town of Delafield determines it is in the best interests of the Town of Delafield to repeal Section 17.10 5H of the Zoning Code of the Town of Delafield to remain consistent with Wisconsin Statutes, and

WHEREAS, the Town Board finds that this change to the Town Zoning Code is not a down zoning ordinance because it does not decrease the development density of land and it does not reduce the permitted uses of land, and therefore the super majority requirement of Section 66.10015, Wisconsin Statutes, does not apply to this ordinance.

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 Code of the Town of Delafield entitled "Zoning," Section 17.10 entitled "Administration and Enforcement," Subsection 5 entitled "Amendments to Zoning Regulations or Map," Subsection H entitled "Protest" is hereby repealed.

**H. Protest:**

~~In case of protest against a change or amendment duly signed and acknowledged by the owners of 20 percent or more either of the areas of land included in such proposed change, or by the owners of 20 percent or more of the area of the land immediately adjacent and extended 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such change shall require a 3/4 vote of the members of the Town Board for passage.~~

**SECTION 2: SEVERABILITY**

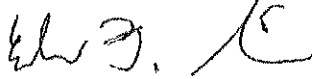
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision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

TOWN OF DELAFIELD



Ed Kranick, Town Chair

ATTEST:



Dan Green, Town Administrator – Clerk/Treasurer

This ordinance posted or published 9/16/2024.

VOTE RESULTS

21 YES 0 NO 0 ABSTAIN 4 ABSENT

Ordinance 179-O-061

Ordinance 179-O-061: Approve Town Of Delafield Ordinance No. 2024-07 That Repeals Section 17.10 (5)(H) Of The Town Of Delafield Code Changes Or Amendments (RZ152)

Passed By Majority Vote

D1 - Styza	AVE	D10 - Thieme	ABSENT	D19 - Enriquez	AVE
D2 - Euclide	AVE	D11 - Howard	M AVE	D20 - Schellinger	AVE
D3 - Morris	ABSENT	D12 - Wolff	AVE	D21 - Gaughan	AVE
D4 - Batzko	AVE	D13 - Leisemann	AVE	D22 - Szpara	AVE
D5 - Grant	AVE	D14 - Mommarts	AVE	D23 - Hammitt	AVE
D6 - Walz	AVE	D15 - Kolb	ABSENT	D24 - Bangs	AVE
D7 - LaFontain	AVE	D16 - Crowley	AVE	D25 - Johnson	AVE
D8 - Koremenos	AVE	D17 - Meier	S AVE		
D9 - Heinrich	AVE	D18 - Nelson	ABSENT		

10th Meeting, 179th Year of the County Board of Supervisors - December 17 2024 06:15:58 PM

