

ENROLLED ORDINANCE 168-67

AMEND THE TEXT OF THE TOWN OF DELAFIELD ZONING ORDINANCE TO  
REPEAL AND RECREATE SECTIONS 17.10(4)(A)(1)(a), 17.10(4)(C), 17.10(4)(D)  
AND 17.10(4)(F)(1) OF THE TOWN OF DELAFIELD ZONING ORDINANCE  
REGARDING THE ADMINISTRATION AND AUTHORITY  
OF THE TOWN BOARD OF APPEALS (ZT-1761)

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 June 11, 2013, 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 Ordinance, adopted by the Town of Delafield July 20, 1998, is hereby amended to repeal and recreate Sections 17.10(4)(A)(1)(a), 17.10(4)(C), 17.10(4)(D) and 17.10(4)(F)(1) of the Town of Delafield Zoning Ordinance regarding the administration and authority of the Town Board of Appeals, 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-1761, is hereby approved.

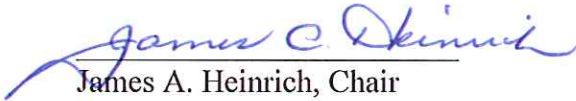
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Delafield.

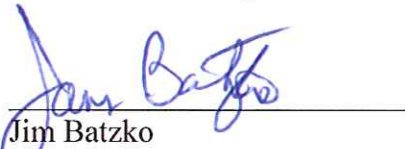
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

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ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

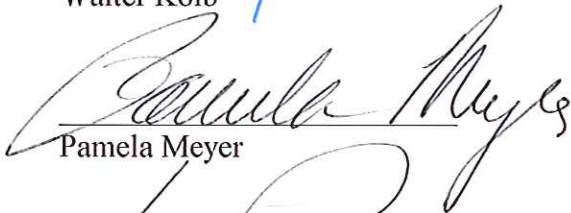
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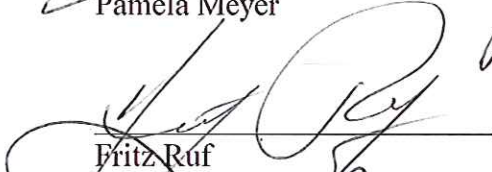
Presented by:  
Land Use, Parks, and Environment Committee

  
James A. Heinrich, Chair

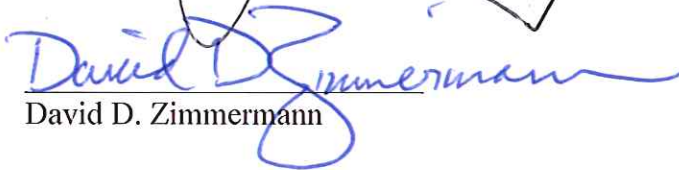
  
Jim Batzko

  
Walter Kolb


  
Pamela Meyer

  
Fritz Ruf


  
Thomas J. Schellinger

  
David D. Zimmermann

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

Date: 12/17/2013,   
Kathleen Novack, County Clerk

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

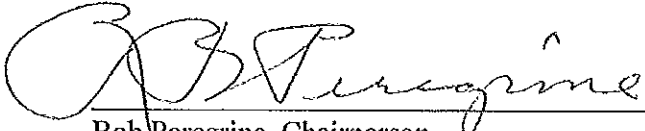
Approved: X  
Vetoed: \_\_\_\_\_  
Date: 12-19-13,   
Daniel P. Vrakas, County Executive

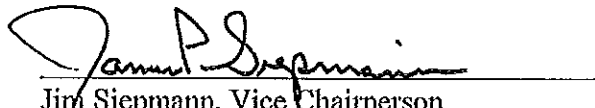
**COMMISSION ACTION**

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-1761 Town of Delafield Board**) in accordance with the attached "Staff Report and Recommendation".

**PARK AND PLANNING COMMISSION**

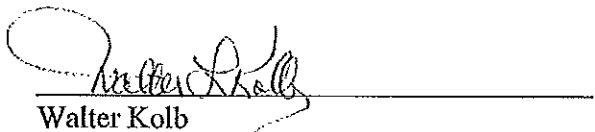
**November 21, 2013**

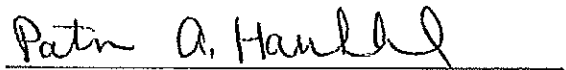
  
\_\_\_\_\_  
Bob Peregrine, Chairperson

  
\_\_\_\_\_  
Jim Siepmann, Vice Chairperson

Absent  
\_\_\_\_\_  
William Mitchell

  
\_\_\_\_\_  
Gary Goodchild

  
\_\_\_\_\_  
Walter Kolb

  
\_\_\_\_\_  
Pat Haukohl

Absent  
\_\_\_\_\_  
Fritz Ruf

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

**FILE NO.:** ZT-1761

**DATE:** November 21, 2013

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

**NATURE OF REQUEST:**

Text amendments (Town Ordinance Number 2013-02) to repeal and recreate Sections 17.10(4)(A)(1)(a), 17.10(4)(C), 17.10(4)(D) and 17.10(4)(F)(1) of the Town of Delafield Zoning Ordinance regarding the administration and authority of the Town Board of Appeals.

**PUBLIC HEARING DATE:**

June 11, 2013.

**PUBLIC REACTION:**

The Town conducted one public hearing on June 11, 2013 relative to three different sets of proposed text amendment ordinances. The subject request only pertains to one of the three sets of proposed text amendments that were heard, because County and Town Staff have agreed to meet to discuss questions and concerns about the other two ordinances that were heard prior to them being advanced for further consideration. All public comments offered at the public hearing related to one of the text amendments that is not subject of this consideration, which is an ordinance to allow special exceptions due to erroneously permitted work. Because those comments are not material to the subject amendment, those comments will be summarized as part of an additional forthcoming report at a subsequent meeting.

**TOWN PLAN COMMISSION:**

On October 16, 2012, the Town Plan Commission recommended approval of proposed ordinance 2013-02 relative to Board of Appeals administration and authority.

**TOWN BOARD ACTION:**

On June 11, 2013, the Town of Delafield Board voted to approve Ordinance 2013-02, as recommended by the Town Plan Commission.

**BACKGROUND AND SUMMARY OF CHANGES**

The Town of Delafield is proposing text amendments to the Town Zoning Code to modify the administration and authority section of the code relative to the Town's Board of Adjustment (BOA). The changes were prompted by recent statutory changes. Specifically, State law now states that decisions of a Board of Appeals do not expire unless the community adopts an ordinance specifying an expiration date for decisions or if the Board of Appeals specifies an expiration date relative to any given case it considers. The proposed language adds provisions to specify that variances are only valid for two years after the date of the granting of a variance unless the BOA specifies a more restrictive deadline. This proposed provision is very similar to the way the Waukesha County Shoreland and Floodland Protection Ordinance reads in this regard.

The proposed amendments also merge the BOA membership sections relative to Board members and alternates and encourages the BOA to create a rule of procedure whereby the regular membership of the BOA and the two appointed alternate members would alternate in those capacities in order to keep BOA work load and experience equal. The changes also match statutory specifications in amending the code to state that a majority vote is required for decisions to carry and specifics that BOA filing fees may be established by the Town Board.

**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 text amendments are minor in nature and are consistent with the statutory scheme for a Town Board of Adjustment. The specification of decision expiration dates will ensure that variances and appeals are utilized in a timely fashion and the other minor changes will bring the Town Code into conformance with current State law.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager

Attachment: Town Ordinance 2013-02

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ORDINANCE NO. 2013-02

AN ORDINANCE TO REPEAL AND RECREATE SECTIONS 17.10(4)(A)(1)(a),  
17.10(4)(C), 17.10(4)(D), and 17.10(4)(F)(1) OF THE TOWN OF DELAFIELD ZONING  
ORDINANCE CONCERNING THE ADMINISTRATION AND AUTHORITY OF THE  
BOARD OF APPEALS

WHEREAS, Section 17.10(4) of the Town of Delafield Code of Ordinances provides for the establishment, administration, and authority of a Board of Appeals pursuant to Section 62.23(7)(e) of the Wisconsin Statutes; and

WHEREAS, the Town Board has referred proposed revisions of certain specified provisions of Section 17.10(4) of the Town of Delafield Code of Ordinances to reflect statutory changes in the provisions of Section 62.23(7)(e) of the Wisconsin Statutes pursuant to Section 17.10(5)(A) of the Town of Delafield Code of Ordinances; and

WHEREAS, the Plan Commission for the Town of Delafield has recommended that the Town Board revise certain specified provisions of Section 17.10 of the Town of Delafield Code of Ordinances to reflect statutory changes in the provisions of Section 62.23 of the Wisconsin Statutes; and

WHEREAS, following Class 2 notice, the Town Board of the Town of Delafield held a public hearing concerning the recommendation of the Plan Commission, as provided in Section 62.23(7)(d) of the Wisconsin Statutes and Section 17.10(6) 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;

NOW, THEREFORE, THE TOWN BOARD OF THE TOWN OF DELAFIELD DO  
ORDAIN AS FOLLOWS:

SECTION 1: Chapter 17 of the Town of Delafield Municipal Code, entitled "The Zoning Ordinance for the Town of Delafield," Section 17.10, entitled "Administration and Enforcement," subsection 4, entitled "Board of Appeals," subsection A, entitled "General Administration," subsection (1) entitled "Establishment," subsection "a", entitled "Authority," is hereby repealed and recreated to read as follows:

a. Authority.

- (1) There is hereby created a Board of Appeals, pursuant to § 62.23(7)(e), Wis. Stats., to consist of 5 members to be appointed by the Chair of the Town, subject to confirmation by the Town Board

for terms of three years, except those first appointed, one shall serve for one year, two for two years and two for three years, respectively; and, thereafter, on January 1 of each year, the new appointments shall be for three year terms. The Town Chair shall also appoint, for staggered terms of three years, two alternate members, to serve as required and established pursuant to § 62.23(7)(e)(2), Wis. Stats. The Board of Appeals is encouraged to establish a procedure which allows all members and alternates to serve on an alternating, random or periodic basis, so that all members and alternates share equivalent work loads and gain equivalent experience.

- (2) Members and alternates of the Board of Appeals shall be removable by the Town Chair, for cause, upon written charges and after public hearing.

SECTION 2: Chapter 17 of the Town of Delafield Municipal Code, entitled "The Zoning Ordinance for the Town of Delafield," Section 17.10, entitled "Administration and Enforcement," subsection 4, entitled "Board of Appeals," subsection C, entitled "Additional Variance Requirements," is hereby repealed and recreated to read as follows:

C. Additional Variance Requirements.

In making its determination the Board shall consider whether the proposed variance would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects; and may impose such requirements and conditions with respect to locations, construction, maintenance and operation, in addition to any which may be stipulated in this chapter, as the Board may deem necessary for the protection of adjacent properties and the public interest and welfare. Any action authorized by a variance granted by the Board shall be completed no later than two years of the date such variance is granted, except as follows. The Board may specify in the variance a specific date by which the action authorized by the variance must be completed, which shall control, provided that such date is less than 2 years from the date the variance is granted.

SECTION 3: Chapter 17 of the Town of Delafield Municipal Code, entitled "The Zoning Ordinance for the Town of Delafield," Section 17.10, entitled "Administration and Enforcement," subsection 4, entitled "Board of Appeals," subsection D, entitled "Required Vote," is hereby repealed and recreated to read as follows:

D. Required Vote.

If a quorum is present, the Board may take action under this Section by

a majority vote of the members present, including such alternate members as may form part of the quorum. The grounds of every such determination shall be stated.

SECTION 4: Chapter 17 of the Town of Delafield Municipal Code, entitled "The Zoning Ordinance for the Town of Delafield," Section 17.10, entitled "Administration and Enforcement," subsection 4, entitled "Board of Appeals," subsection F entitled "Appeals," subsection 1, entitled "How Filed," is hereby repealed and recreated to read as follows:

F. Appeals.

1. How Filed.

- a. Appeals to the Board of Appeals may be taken by any person aggrieved or by any taxpayer or any officer, department, board or bureau of the Town affected by any decision of the administrative officer. Such appeal shall be taken within 20 days from the date of the decision appealed from by filing with the administrative officer from whom the appeal is taken and with the Board of Appeals, a notice of appeal specifying the grounds thereof. The administrative officer from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- b. The Town Board may, by ordinance or resolution, establish reasonable filing fees for the filing of an appeal to the Board of Appeals. Such filing fees shall be paid at the time of filing of the appeal.

SECTION 5: 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 this ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances having terms in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 6: This ordinance shall take effect immediately upon passage and posting or publication as provided by law.



Passed and approved this 11<sup>th</sup> day of June, 2013.

Town of Delafield

By:   
Paul L. Kanter, Town Chairman

ATTEST:

  
Mary Elsher, Town Clerk

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-01/28/14

(ORD) NUMBER-1680067

- |                          |                          |
|--------------------------|--------------------------|
| 1 C. SLATTERY.....       | 2 D. Zimmermann.....AYE  |
| 3 R. MORRIS.....AYE      | 4 J. BATZKO.....AYE      |
| 5 J. BRANDTJEN.....AYE   | 6 J. JESKEWITZ.....      |
| 7 J. GRANT.....AYE       | 8 P. HAUKOHL.....AYE     |
| 9 J. HEINRICH.....AYE    | 10 D. SWAN.....AYE       |
| 11 F. RUF.....AYE        | 12 P. WOLFF.....AYE      |
| 13 P. DECKER.....AYE     | 14 P. MEYER.....AYE      |
| 15 W. KOLB.....AYE       | 16 M. CROWLEY.....AYE    |
| 17 D. PAULSON.....AYE    | 18 L. NELSON.....AYE     |
| 19 C. CUMMINGS.....AYE   | 20 T. SCHELLINGER....AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE      |
| 23 K. HAMMITT.....AYE    | 24 D. DRAEGER.....AYE    |
| 25 G. YERKE.....         |                          |

TOTAL AYES-22

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-22