

# **TOWN OF DUNN**

**RES. 2013-02**

## **Parallel Approval Authority for Special Exceptions**

**BE IT HEREBY RESOLVED**, that the Town of Dunn Board of Supervisors, Dunn County, Wisconsin, support the parallel approval authority for special exceptions to zoning for the Dunn County Comprehensive Zoning Ordinance revision as presented by the Town of Lucas dated October 8, 2013 and attached.

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**Chairman, Don Heit**

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**1 Supervisor, Dennis Weber**

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**2 Supervisor, John Miller**

**Passed and approved this  
9th day of October, 2013.**

**Recorded in the Regular  
Town Board Minutes dated  
October 9, 2013.**

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**Vicki Price, Clerk  
Town of Dunn**

Date: October 8, 2013

To: Dunn County Township Members

From: Eugene Ruenger, Chair, Lucas Township

Re: Parallel Approval Authority For Special Exceptions To Zoning

Lucas Township would appreciate your township's support for an amendment to the proposed Dunn County Comprehensive Zoning Ordinance to include township parallel approval authority for special exceptions to zoning.

As indicated by Wisconsin Towns Association Attorney Lee Turonie and Community Code Service Attorney Alan Harvey county authority to grant additional approval authority is well established by case law and township parallel approval authority for special exceptions to zoning has a long history in several of the most rapidly developing counties in Wisconsin.

Peggy Tilley, Senior Land Use Specialist for Waukesha County Department of Parks and Land Use, indicated that Waukesha County has had township parallel approval authority for special exceptions to zoning since the mid-seventies.

Brian Jensen, Development Services Superintendent for Racine County, stated that Racine County has had township parallel approval authority for special exceptions to zoning since before he started 23 years ago. During our discussion he expressed surprise that it was not the procedure for all counties.

Dane and Columbia Counties more recently included township parallel approval authority for special exceptions to zoning in their ordinances. A comprehensive search of all counties zoning ordinances in the state has not been performed.

Township parallel approval will strengthen local control with no diminishment of county authority. The parallel approval authority includes a County Board of Adjustment review of township-approved special exceptions and a County Board appeal process. Because zoning is, in essence, a highly local issue, approval at both county and township levels will make the proposed zoning ordinance stronger.

Please encourage your County Board members to support the proposed amendment.

The following is the section of the zoning ordinance that addresses the procedures for special exceptions to zoning as amended to provide township parallel approval authority.

*Special Exceptions to Zoning Procedures as amended to include Township Parallel Approval Authority*

13.4.0.04 (f)

Subject to subpart (f)(1), grant special exceptions where certain uses and situations are of such special nature or their effect is dependent upon actual contemporary circumstances so as to make impractical the determination in advance of permissibility. Each zoning district contains those uses requiring a special exception and conditions as determined by the Board of Adjustment. Special exceptions shall only be granted subject to the following provisions and factors:

1. a) The town board of the town where a special exception **use is proposed shall be given notice and opportunity to approve or disapprove a special exception use. The town board shall communicate its position in writing on the special exception use application within seventy (70) days from the date of the completed application. The town board may request an extension of the review period of up to forty (40) days by submitting a written request to the zoning committee.**
  - b) Either the town board or the Board of Adjustment may deny an application for special exception permit. If the town board action is denial no further action by the Board of Adjustment is required. The Board of Adjustment may approve or deny a special exception permit without town action if the town board fails to act within the time period set forth in subpart (1)(a) above. All such decisions may be appealed to the county board under 13.4.0.04 subpart (f)(6). If the county board reverses a denial by the town board, the application shall be referred to the Board of Adjustment with instructions to draft appropriate conditions.
  - c) Town board and Board of Adjustment actions shall be supported by written findings of fact. Failure of a town board or the Board of Adjustment to make written findings of fact shall constitute approval of the application. Written findings of fact shall, at a minimum, address the standards enumerated in 13.4.0.04 subpart (f)(4). All findings shall be based solely upon the evidence within the public record.
  - d) If the town board approves the application subject to conditions and such conditions are amended or deleted by the Board of Adjustment, the special exception permit as approved by the Board of Adjustment shall be submitted to the town board for approval of the Board of Adjustment's conditions or denial of the permit. The town board shall submit a certified resolution indicating their action to the zoning administrator within forty (40) days of the approval by the Board of Adjustment. If the town board does not act within the forty (40) day time period, the permit shall be deemed approved. If the town board denies the permit with the conditions as amended by the Board of Adjustment, the permit shall be deemed denied. Such denial is appealable to the county board under 13.4.0.04 subpart (f)(6).

**2. No special exception shall be granted without hearing before the Board of Adjustment after the submission of a completed application for the exception;**

3. No special exception shall violate the spirit of general intent of this ordinance.
4. No special exception shall be granted allowed which would be contrary to the public health, safety or general welfare or which would be substantially adverse to property values in the neighborhood. In making the determination, the Board shall consider the following:
  - a) Any written or oral opinion or recommendation submitted by the Township in which the proposed exception is to exist;
  - b) The danger to life and property due to increased flood heights or velocities caused by encroachments.
  - c) The proposed water supply and sanitation systems and the ability of these systems to prevent the occurrence of disease contamination and unsanitary conditions.

- d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the owner and surrounding properties;
- e) By use constituting a nuisance be reason of noise, dust, smoke, odor or similar factors;
- f) The effect of the proposed use on the surrounding area, its compatibility with the area and the comprehensive plan then existing for the property; or
- g) Other regulations or statues.

5. Upon receipt of a completed application by the Zoning Administrator according to the provisions of 13.4.0.04(g), the Zoning Administrator shall immediately transmit a copy electronically to the Clerk of the Town in which the proposed use is to take place and within 24 hours mail a paper copy to the Clerk. Both transmittals shall invite the Town to submit its decision on the application not later than 70 days from the date of the completed application. A hearing before the Board of Adjustment shall be scheduled not less than 30 days nor more than 60 days from the date of the completed application by the Zoning Administrator. The Board of Adjustment shall not take action on the application for special exception until the time period for action by the town board has expired. The date of completion shall be noted on the front page of the application by the Zoning Administrator.

6. *Appeal.* Any person aggrieved by the grant or denial of a special exception permit may appeal the decision of the town board or Board of Adjustment to the county board. Such appeal must specify the grounds thereof in respect to the findings of the Board of Adjustment, town board or both, the reason why the appellant is aggrieved and must be filed with the office of the zoning administrator within 20 days of the final action. The zoning administrator shall transmit such appeal to the county clerk who shall file such appeal with the county board. The county board shall fix a reasonable time for the hearing of the appeal and give public notice thereof as well as due notice to the applicant and the appellant(s) and decide the same within a reasonable time. The action of the Board of Adjustment, town board or both, shall be deemed just and equitable unless the county board by a three- fourths vote of supervisors present and voting reverses or modifies the action appealed from. An appeal from a decision of the Board of Adjustment, town board or both, shall be taken to the county board. No other entity of county government has jurisdiction to hear any such appeal and the avenue of appeal provided for herein is exclusive.