

Note: This version of the Zoning Code differs from the official printed version as follows:

- a. Dimensions are expressed in numerical format rather than alpha format, e.g., “27 feet” rather than “twenty-seven feet.”
- b. Paragraph indentation style is different.
- c. Unused and blank section numbers are omitted rather than shown as reserved.
- d. Editor’s notes, amendment history, cross references and other editorial enhancements are omitted.
- e. Page numbering is different.

## Chapter 62

### **ZONING**

(First adopted August 21, 1979)

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### Chapter 63

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## ARTICLE I IN GENERAL

### Sec. 62-1 Introduction

The town board of the Town of Beaver Dam do ordain as follows: A code providing zoning regulations for the Town of Beaver Dam, Dodge County, Wisconsin.

- (1) *Authority.* These regulations are adopted under the authority granted by Wis. Stats. § 60.62 and amendments thereto. The town board of the Town of Beaver Dam, Dodge County, Wisconsin having been granted village powers pursuant to Wis. Stats. § 60.10(2).
- (2) *Purpose.* The purpose of this chapter is to promote the health, safety, morals, prosperity, aesthetics and general welfare of the Town of Beaver Dam.
- (3) *Intent.* It is the general intent of the chapter to regulate and restrict the use and development of all structures, lands and water; to regulate and restrict lot coverage, population distribution and density, tree cutting, dredging and lagooning in shoreland areas and the size and location of all structures, so as to: lessen congestion, and promote safety from fire, flooding, panic and other danger; provide adequate light and air; prevent overcrowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; promote safety and efficiency of highways; stabilize and protect property values; prevent water pollution; protect spawning grounds, fish and aquatic life and otherwise further the appropriate use of land and conservation of natural resources; preserve and promote the beauty of the town; and implement the town's comprehensive plan and plan components. It is further intended to provide for the administration and enforcement of this chapter and to provide penalties of its violation.
- (4) *Abrogation and greater restrictions.* It is not intended by this chapter to repeal, abrogate, annul, impair or interfere with any existing easement, covenants, deed restrictions, agreement, ordinances, rules, regulations or permits previously adopted or issued pursuant to law. However, wherever this chapter imposes greater restrictions, the provisions of this chapter shall govern.
- (5) *Interpretation.* The provisions of this chapter shall be interpreted and applied as minimum requirements, shall be liberally construed in favor of the town, and shall not be deemed a limitation of repeal of any other power granted by the Wisconsin Statutes.
- (6) *Severability.* If any section, clause, provision or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect the remainder of this chapter.
- (7) *Repeal.* All other ordinances or parts of ordinances of the town inconsistent or conflicting with this chapter, to the extent of the inconsistency only, are hereby repealed.
- (8) *Title.* Ordinance shall be known as, referred to, or cited as the "Zoning Code, Town of Beaver Dam, Dodge County, Wisconsin."
- (9) *Effective date.* This chapter shall be effective after a public hearing, adoption by the town board, approval by the Dodge County Board of Supervisors and publication or posting as required by law.

### Sec. 62-2 Jurisdiction

The jurisdiction of this chapter shall include all land and waters within the boundaries of the Town of Beaver Dam lying outside the limits of incorporated cities and villages. In those areas under the jurisdiction of the Town of Beaver Dam Zoning Code and the Dodge County Shoreland Wetland Ordinance, both the zoning code and the county Shoreland Wetland Ordinance shall be in full effect and all requirements of both shall be met except as limited by Wis. Stats. § 60.62(5)(c).

### **Sec. 62-3 Compliance**

No structure, land or water shall hereafter be used and no structure, or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a building permit and/or a land use permit and without full compliance with the provisions of this chapter and all other applicable town, county and state regulations. Minor structures and normal repairs to existing structures of less than the value amount as set by the town board shall be exempt.

Where the terms and objectives of this chapter have been substantially addressed and fulfilled by the Wisconsin Department of Natural Resources where concurrent jurisdiction with this chapter exists, so as to avoid duplication of effort, the terms of this chapter shall not be imposed. The concurrent jurisdiction with the Department of Natural Resources only includes land under specific jurisdiction of the Department of Natural Resources, Army Corps of Engineers and Dodge County.

### **Sec. 62-4 Zoning administrator**

There is hereby created the office of zoning administrator for the Town of Beaver Dam. The zoning administrator shall have all the powers necessary to administer and enforce this chapter.

The zoning administrator may enter at any reasonable time onto public or private lands to make a zoning inspection. If the zoning administrator finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for such violation and order the action necessary to correct it. He or she shall order discontinuance of any illegal work being done; or shall take any other action authorized by the chapter to insure compliance with or to prevent violation of its provisions.

### **Sec. 62-5 Land use permits**

Applications for a land use permit shall be made to the zoning administrator on forms furnished by his or her office and shall include the following where applicable:

- (1) Names and addresses of the applicant, owner of the site or agent for the owner.
- (2) Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site; type of structure, existing and proposed operation or use of the structure or site; number of occupants or employees; and the zoning district within which the subject site lies.
- (3) Sketch showing dimensions of the lot and locations of proposed and existing buildings from the lot lines, centerline of abutting highways and the high water mark of abutting watercourse.
- (4) Additional information as may be required by the zoning administrator.
- (5) Fee shall be in the amount as set by the town board by resolution from time to time.

Any application for a land use permit shall be granted or denied in writing by the zoning administrator within 45 days. If denied, the reasons for such denial shall clearly appear upon the face of the notification of denial. A land use permit that is granted shall expire within 12 months unless substantial work has commenced. Any permit issued in conflict with the provisions of this chapter shall be null and void.

### **Sec. 62-6 Certificate of zoning compliance**

No land or building, or addition thereto, constructed after the effective date of this chapter and no addition, alteration, reconstruction, extension, enlargement, conversion or structural alteration to a previously existing building shall be occupied or used for any purposes unless in conformity with the plans and specifications upon which the land use permit was issued. A certificate of zoning compliance may be issued by the zoning administrator upon request. Every certificate of zoning compliance shall state that the use or occupancy complies with all the provisions of this chapter.

- (a) *Application for certificate of zoning compliance.* Every application for certificate of zoning compliance for a new use or change in use of land or building shall be made directly to the office of the zoning administrator on forms provided by his or her office.
- (b) *Issuance of certificates of zoning compliance.* No certificate of zoning compliance for a building or portion thereof, constructed after the effective date of this chapter, shall be issued until construction is substantially completed, and the premises inspected and certified by the office of the zoning administrator to be in conformity with the plans and specifications upon which the land use permit was issued.
- (c) *Issuance of certificates of nonconforming uses.* Any person, firm or corporation having a legal or equitable interest in a property which is nonconforming as to standards may require a certificate of zoning compliance. The applicant shall present documentary proof that said use was a permitted use at the time it originated and was made nonconforming by the adoption of this chapter or amendment thereto. After verifying the use in question is in fact a nonconforming use, the zoning administrator shall issue a certificate of zoning compliance stating the use in question' and the zoning of the property.

### **Sec. 62-7 General requirements**

All principal structures shall be located on a lot; and only one residential principal structure shall be located, erected or moved onto a lot.

No land use permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width and located on that site from which the required dedication has not been secured.

- (a) *Minimum lot area and width.* Except as otherwise specifically required or permitted the minimum lot area shall be 40,000 square feet and a minimum lot width of 125 feet at the building setback line and 125 feet at the water's edge along a navigable waterway. Lots served by public sanitary sewer shall have a minimum lot area of 10,000 square feet and 80 feet of lot width at the building setback line.
- (b) *Side yards.* There shall be a side yard for each principal structure. For lots not served by public sanitary sewer, the minimum width of one side yard shall be 10 feet. The minimum aggregate width of both side yards shall be 25 feet. For lots served by public sanitary sewer, the minimum width of one side yard shall be 10 feet. The minimum aggregate width of both side yards shall be 20 feet. Side yards for substandard lots may be reduced to a minimum aggregate width of both side yards of 40 percent of the lot width and a minimum width of one side yard of 40%t of the aggregate.
- (c) *Floor area.* A one-story single-family dwelling, including manufactured homes located outside of a manufactured home park, shall have at least 1,400 square feet of finished living area. A multi-floor single-family dwelling shall have a minimum of 1,800 square feet of finished living area. Multifamily, single- or multistory dwellings shall have a minimum of 1,200 square feet of finished living area per unit. All homes shall be placed upon a permanent basement type foundation. Finished basement areas are not to be used for calculating finished living areas.
- (d) *New home building foundation requirement.* It is hereby required that each new home constructed have at a minimum height, its first floor sill plate 2 feet above the finished road grade which its home abuts. Documentation of this elevation shall be upon the site map sketch presented for approval of a building permit. The town board realizes, in certain elevation situations this requirement would not be practical. In those instances, the town land use administrator is authorized to waive this requirement. The waived requirement shall be substituted for a suitable elevation that will locate the new home as well as practical above surface or groundwater issues having the potential for flooding the basement area and creating the need for an extensive mechanical water evacuation system.

### **Sec. 62-8 Use restrictions**

The following use restrictions and regulations shall apply:

- (a) *Principal uses.* Only those principal uses specified for a district, their essential services and the following uses shall be permitted in the district.
- (b) Accessory residential uses and structures are permitted, but not until the residence is present or under construction. Residential accessory uses shall not involve the conduct of any business.
- (c) Conditional uses and their accessory uses are those which require review, public hearing and approval by the town plan commission. The only conditional uses and structures permitted by this chapter shall be those enumerated in the schedule of district regulations.
- (d) Temporary uses such as real estate field offices, roadside stands or shelters for materials and equipment being used in the construction of a permanent structure may be permitted by the zoning administrator through the issuance of a certificate of zoning compliance for a period not to exceed 6 months. This temporary certificate may be renewed semiannually but in no case shall the effective time span of the certificates exceed 2 years.

### **Sec. 62-9 Reduction of joint use**

No lot, yard, parking area, building area or other space shall be reduced in area or dimension, so as not to meet the provisions of this chapter.

### **Sec. 62-10 Pet and animal regulations**

In platted residential subdivisions no animals other than household pets shall be allowed.

In all zoning districts, household pets shall be allowed provided that not more than three dogs are kept on any one premises. However, offspring of permitted household pets may be kept and sold from the premises for a period of up to 6 months.

On parcels less than 35 acres in area, the number of animals, excluding household pets, kept on any one premises shall not exceed the ratio of one animal unit for each acre of land owned or leased.

### **Sec. 62-11 Violations**

It shall be unlawful to construct any structure or building or to use any structure, building, land or water in violation of any of the provisions of this chapter. In case of any violation, the town plan commission, town board, zoning administrator or any property owner who would specifically be damaged by such violation may institute appropriate action or proceeding to enjoin a violation of this chapter.

### **Sec. 62-12 Penalties**

Any person, firm or corporation who fails to comply with the provisions of this chapter shall upon conviction thereof, forfeit not less than \$25.00 nor more than \$500.00 and cost of prosecution for each violation and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until payment thereof, for a period not to exceed 30 days. Each day a violation exists or continues shall constitute a separate offense.

### **Sec. 62-13 Outdoor storage of inoperable vehicles**

Any motor vehicle that is without a current, valid license or which is incapable of being driven shall not be stored on any premises except in a properly authorized salvage yard, within an enclosed structure or unless it is not visible from a public road or adjacent dwelling. This provision shall apply to any vehicle subject to the above provisions regardless of when it was placed on the premises, but shall not apply to farm equipment.

The Dodge County Circuit Court may, upon the petition of and at the request of the town, order removal of the violating vehicle(s), at town expense. The town shall then invoice the property owner for all such costs incurred. If that invoice is not paid within 30 days, the town may place the amount of the invoice on the tax rolls as special assessment against the property in question.

The zoning administrator may submit any such case in question to the town board for its determination.

## **Sec. 62-14 Definitions**

For the purpose of this chapter, certain words and terms are defined as listed below. Also, words used in the present tense include the future; the singular number includes the plural number and the plural number includes the singular number; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory.

*Accessory building or structure.* A use or detached structure subordinate to the principal use of a structure, land or water and located on the same lot or parcel serving a purpose customarily incidental to the principal structure.

*Adult entertainment.* Any business engaged in the sale or display of books, videos, and other materials of a pornographic nature offensive to a significant segment of the population. Included are live performances and movie theater showings of a pornographic nature. Gambling or wagering facilities are also defined as adult entertainment.

*Agricultural use.* Beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 2831 to 2836; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising.

*Animal facility.* Any livestock or poultry operation involving animals that are used in the production of food, fiber, or other animal products and will be fed, confined, maintained, or stabled for a total of 45 days or more in any 12-month period.

*Animal unit.* A unit of measure used to determine the total number of single animal types or combination of animal types, as illustrated in the accompanying animal calculation table, which are fed, confined, maintained, or stabled in an animal feeding operation. The total number of animal units for a given type of animal shall be calculated by multiplying the number of animal units for each animal type for the appropriate equivalency factor from the following table, and summing the products. The number of combined animal units shall be the sum of the number of animal units for each animal type. For animal types not listed in the following table, the equivalency to animal units shall be based on live animal weights. In these cases, 1,000 pounds of live weight is equivalent to one animal unit.

<i>Animal Calculation Table</i>		
<i>Number Equivalent to 500 Animal Units</i>	<i>Animal Type</i>	<i>Animal Equivalency Factor</i>
<b>Dairy Cattle:</b>		
350	Milking and dry cows	1.4
455	Heifers (800 to 1,200 lbs.)	1.1
835	Heifers (400 to 800 lbs.)	0.6
2,500	Calves (under 400 lbs.)	0.2
<b>Beef Cattle:</b>		
500	Steers or cows (600 lbs. to mkt.)	1.0
1,000	Calves (under 600 lbs.)	0.5
350	Bulls	1.4
<b>Goats:</b>		
5,000	Kids	0.1
<b>Swine:</b>		
1,250	Pigs (55 lbs. to mkt.)	0.4
5,000	Pigs (up to 55 lbs.)	0.1
1,250	Sows	0.4
1,000	Boars	0.5
<b>Sheep:</b>		
5,000	Per animal	0.1
<b>Horses:</b>		
250	Per animal	2.0
<b>Ducks:</b>		
2,500	Per bird (wet lot)	0.2
50,000	Per bird (dry lot)	0.01
<b>Chickens:</b>		
50,000	Layers	0.01
100,000	Boilers	0.005
50,000	Boilers (continuous overflow watering)	0.01
15,000	Layers or boilers (liquid manure system)	0.033
<b>Turkeys:</b>		
27,500	Per bird	0.018

*Arterial street.* A public road or highway used or intended to be used primarily for fast or heavy through traffic. Arterial streets and highways shall include freeways and expressways as well as arterial streets, highways and parkways.

*Basements.* Basements with frost-type footings, top of footing 4 feet below outside elevations, are to be constructed under the living area of a home. The basement shall be a minimum of 7 feet in height between the basement floors to the first floor sill. They may have finished living areas; however, these areas do not count toward the required minimum living area.

*Building area.* Total ground coverage in square feet of all buildings and structures including garages, carports and others attached or accessory structures.

*Building height.* The vertical distance of a building measured from the average elevation of the finished grade within 20 feet of the structure to the highest point of the roof.

*Conditional uses.* Uses of a special nature as to make impractical their predetermination as a permitted use in a district.

*Condominium.* Property subject to a condominium declaration established under the authority of the condominium laws of the State of Wisconsin.

*Corner lot.* A lot abutting 2 or more streets at their intersection is a corner lot.

*Density.* Number of living units per acre allowable under the schedule of district regulations. *Duplex.* A dwelling containing 2 dwelling units.

*Dwelling.* A building designed or used exclusively as a residence or sleeping place, but does not include boarding or lodging houses, motels, hotels, tents, and/or cabins.

*Dwelling, multiple-family.* A dwelling containing three or more dwelling units. *Dwelling, one-family.* A dwelling containing one dwelling unit.

*Dwelling unit.* One or more rooms which are arranged, designed or used as living quarters for one family only.

*Essential service.* Services provided by public and private utilities necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface or overhead gas, electricity, steam, water, sanitary sewage, stormwater drainage and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations and hydrants, but not including buildings.

*Family.* Any number of persons related by blood, adoption, or marriage or not to exceed four persons not so related, living together in one dwelling as a single housekeeping entity.

*Farm consolidation.* Allowing a parcel to be created by separating a farm building site from the adjoining farmland when a farm is purchased and combined into another ongoing farm operation having the same ownership. All other requirements for a conditional use permit must be followed.

*Floor area.* Area in square feet of all floors in a building including elevators and stairways, measured by the perimeter or outside walls multiplied by the number of floors, excluding basements.

*Foundation.* A wall that is below the frost line with a basement.

*General farming.* General farming shall include all agricultural uses except raising of livestock and the facilities necessary for their care. General farming shall not be considered the intended use of the property unless a 35 or more acre parcel exists or is proposed. Unless otherwise prohibited by district or general provision regulations of this chapter, existing parcels of less than 35 acres may be used for general farming purposes.

*Height.* Overall height of the top of a structure, or top of any object of natural growth; when referring to a tower or other similar structure, the distance measured from ground level to the highest point on the tower or other similar structure, even if said highest point is an antenna.

*Household pets.* Animals commonly found in residences as pets, such as dogs, cats, songbirds and other small animals, providing that they are not raised or reared for commercial resale or as a source of staple supplement. Household pets shall not include horses, chickens, cows, goats, sheep, hogs or other animals not commonly found in residences.

*Junk yard.* A parcel of land on which waste material or inoperative vehicles and other machinery are collected, stored, salvaged or sold. Three or more unlicensed or inoperable vehicles on the same premises shall be evidence of operation of a junk yard. Old farm machinery located on an operating farm shall not be included within the meaning of a junk yard.

*kennel.* The use of land, with related buildings or structures, for the commercial breeding, rearing, or boarding of more than three dogs.

*Livestock.* Includes cattle, swine, poultry, sheep, and goats.

*Loading area.* A completely off-street space or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public road.

*Lot.* A parcel of land having frontage on a public road, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, parking area, and other space provisions of this chapter.

*Lot lines and area.* The peripheral boundaries of a parcel of land and the total area lying within such boundaries under one ownership. Public roads and navigable waterways are considered lot dividers.

*Lot width.* The horizontal distance between side lot lines.

*Manufactured home lot.* A parcel of land designed for the exclusive use of the occupants of a single manufactured home.

*Manufactured home park.* A parcel of land under single ownership which has been planned and improved for the placement of manufactured homes which will be occupied and used as a permanent residential dwelling versus as for a campground and camping.

*Manufactured homes.* Any structure certified and labeled as a manufactured home under 42 U.S.C. 5401-5426, as may be amended, which is placed on a foundation and which, when erected on a site, has an area of at least 1,400 square feet of living area which is used as a single-family dwelling and which has a separate well and sanitary system.

*Minor structures.* A structure which is 100 square feet in area or less and is accessory to the principal use of the lot and fences under 4 feet in height.

*Mobile home.* A transportable structure, except a manufactured home, intended for human habitation, which by its inherent design may be moved from site to site as necessary; which may have an oversized width for normal traffic allowances and thereby require a special travel permit from state or county highway officials; and which may have its undercarriage removed to facilitate a better location on a slab, piers or foundation.

*Motel.* A series of attached, semi-attached or detached sleeping units for the accommodation of transient guests.

*Motor vehicle sales and service.* Sales and repairs to autos and light trucks used mainly for the transportation of people.

*Multifamily dwelling.* A building such as a duplex, apartment, or condo where more than one dwelling unit is housed in a building with each dwelling unit having separate entrances, utilities, living quarters, bedrooms and bathroom facilities.

*Nightclub or supperclub.* An establishment having an alcoholic license and serving primarily lunches and dinners prepared by a chef. Facilities of this type often have the ability to serve larger groups such as weddings, Christmas parties, and anniversaries.

*Nonconforming uses or structures.* Any structure, land or water, lawfully used, occupied or erected at the time of the effective date of this chapter or amendments thereto which does not conform to the regulations of this chapter or amendments thereto. Any such structure conforming in respect to use, but not in respect to frontage, width, height, area, yard, parking, loading, or distance requirements shall be considered a nonconforming structure and not a nonconforming use.

*Restaurant.* An establishment having dining facilities and a kitchen, serving breakfasts, lunches and dinners available from a menu, which are prepared on site.

*Road.* A public right-of-way intended to be used for passage or travel by motor vehicles.

*Salvage yard.* A parcel of land where waste material, inoperative vehicles and other machinery are collected, stored, and then processed for salvage and sold. Three or more unlicensed or inoperable

vehicles on the same premises shall be evidence of operation of a salvage yard. Old farm machinery located on an operating farm shall not be included within the meaning of a salvage yard.

*Sign.* Any words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is made or known and which are used to advertise or promote an individual firm, association, corporation, profession, business, commodity, or product and which are visible from any public road or highway.

*Structure.* Any erection or construction, such as buildings, towers, masts, poles, booms, signs, decorations, carports, machinery and equipment, including all buildings.

*Structural alterations.* Any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams or girders.

*Tavern.* An establishment which has a proprietary liquor license granting it the legal ability to sell and serve alcoholic beverages to the public. A bar is usually present around which customers congregate. Food, if served, is usually prepared on a grill and of the short-order type.

*Truck sales and service.* Sales and service to vehicles used for the transportation and delivery of freight and commodities.

*Utilities.* Public and private facilities such as water wells, water and sewage pumping stations, water storage tanks, power and communication transmission lines, electrical power and substations, static transformer stations, and gas regulation stations, but not including sewage disposal plants, municipal incinerators, warehouses, shops and storage yards.

*Yard.* An open space on the same lot with a structure, unoccupied and unobstructed from the ground upward except for vegetation. The street and rear yards extend the full width of the lot.

*Yard, rear.* A yard extending across the full width of the lot, the depth of which shall be the minimum distance between the rear lot line and the nearest point of the principal structure.

*Yard, side.* A yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the nearest point of the principal structure and the property line.

*Yard, street.* A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have 2 such yards.

*Zoning administrator.* The zoning administrator for the Town of Beaver Dam or such person designated to perform the duties of the zoning administrator.

## ARTICLE II - ZONING DISTRICTS

### DIVISION 1- GENERALLY

#### **Sec. 62-41 Establishment**

For the purpose of this chapter, the following primary use districts are hereby established within the Town of Beaver Dam.

#### Primary Use Districts

1. CO—Conservancy
2. A-1—Prime Agricultural
3. A-2—General Agricultural
4. R-1—Single-family Residential
5. R-2—Residential
6. C-1—Commercial
7. I-1—Industrial

**Sec. 62-42 Official zoning map**

A certified copy of the official zoning map is adopted and approved with the text of this chapter. Said map and any certified amendments or changes thereto are as much a part of this chapter as this text and shall have full force and effect on the adoption of this chapter.

DIVISION 2 DISTRICT REGULATIONS

**Sec. 62-61 CO—Conservancy**

The primary purpose of this district is for uses compatible with protecting, preserving and enhancing the lakes, rivers, wetlands, floodplains and other significant natural areas within the town, such as wooded areas of environmental importance, archaeological sites of significant importance or other areas of which the public has interest in preserving.

Uses and structures may be subject to the Dodge County Shoreland Wetland and Floodplain Overlay Districts, where applicable.

(a) *Permitted uses.*

- (1) Agricultural use provided no farm buildings are constructed;
- (2) Harvesting of any wild crop such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds;
- (3) Hiking trails, bridle paths and walkways, including those built on pilings;
- (4) Hunting and fishing preserves, waterfowl blinds;
- (5) Nonresident buildings used solely in conjunction with the raising of waterfowl, minnows and other similar lowland animals, fowl and fish;
- (6) Piers and docks;
- (7) Sustained yield forestry;
- (8) Wildlife ponds.

(b) *Conditional uses.*

- (1) Boathouses;
- (2) Dams;
- (3) Filling, drainage or dredging;
- (4) Parks, picnic areas, golf courses and similar uses;
- (5) Relocation of any watercourse;
- (6) Removal of topsoil or peat.

(c) *Area, height and yard requirements.*

Lot: See section 62-7.

Height: 40 feet maximum.

Yards:

Rear: Minimum 25 feet.

Side: See section 62-7.

Street: See section 62-122.

All conditional use permits to be granted only upon a finding by the plan commission that such use or structure will not restrict a floodway or destroy the storage capacity of a floodplain.

## **Sec. 62-62 A-1—Prime agricultural district**

The purpose of this district shall be to promote an area for agricultural uses on the town's best quality agricultural land.

### *(1) Permitted uses.*

- (a) Agricultural use.
- (b) Animal feeding operations with less than 500 animal units.
- (c) Single-family residences and accessory buildings existing as of the date of this amendment to the zoning code and additions thereto.

### *(2) Conditional uses.*

- (a) Animal feeding operations with 500 or more animal units of types more fully described under "animal confinement facilities" in definitions section of this chapter. Granting of the conditional use shall be subject to State of Wisconsin siting law outlined in ATCP 51.
- (b) Communication towers.
- (c) Greenhouses and plant nurseries.
- (d) Horses, horse stables and riding arenas.
- (e) Livestock sales barns and stockyards.
- (f) Mineral extraction.
- (g) Single-family dwellings for the primary farm operator.
- (h) Non-farm single-family dwellings are limited to one lot created per each owned qualifying contiguous 75-acre parcel, or if the bonus plan is implemented, five clustered lots per each owned qualifying contiguous 75-acre parcel. Single housing and accessory buildings are to be located in a site envelope approved by the plan commission not to exceed 1.5 acres in size and detached from the 75-acre qualifying parcel. Regulations for the bonus plan are located in section 62-186.

1. When an individual owns land in the Town of Beaver Dam in addition to a qualifying parcel as in subsection 62-62(2)(h), the following shall apply:

- a. The purpose of this section is to concentrate housing in one area thereby keeping larger open areas better suited for agricultural uses.
- b. The total of all lands owned, contiguous or not, shall be used to determine a total increment number of 75-acre parcels.
- c. Total increment number shall be qualifying number of non-farm single-family residential uses to be conditionally allowed.
- d. All conditionally applied for and approved units shall be located on one 75-acre or multiple smaller parcels disregarding when applied for or approved.
- e. Where smaller parcels are used to site approved non-farm residential uses, all of the parcel must be fully parceled before another parcel shall be used for siting.
- f. When the bonus plan is used, the siting of approved units shall be as set forth in this section.
- g. All other requirements are as in subsection 62-62(2)(h).

### *(i) Farm consolidation.*

1. The separation of farm residences or structures from the larger farm parcel may be allowed as a conditional use if it meets all of the following requirements:

- (a) The separation meets the definition of farm consolidation;
- (b) The residence or structures existed prior to the adoption of this Code;

- (c) The separated parcel shall be no larger than reasonably necessary to accommodate the proposed use or 5 acres;
- (d) The separation meets all of the standards applicable to conditional uses;
- (e) The created parcel must conform with all applicable regulations set forth in Sec. 62-7.

(3) *Area, height and yard requirements.*

Lot: Minimum 75 acres except uses which are conditionally allowed or result from farm consolidation shall conform to the minimum lot size requirement set forth in section 62-7. For provisions regarding existing substandard size parcels, see Sec. 62-245.

Height: 40 feet maximum; agricultural structures - see Sec. 62-181.

Yards:

Rear: Minimum 25 feet.

Side: See Sec. 62-7 (structures used to house animals shall have a 100-foot minimum side yard).

Street: See section 62-122.

**Sec. 62-63 A-2—General agricultural district**

The purpose of this district shall be to promote an area for uses of a generally agricultural nature on town lands of better agricultural quality.

- (1) *Permitted uses.* Uses permitted in the A-1 prime agricultural district.
- (2) *Conditional uses.*
  - (a) Aircraft landing fields and hangers.
  - (b) Campgrounds
  - (c) Dog kennels.
  - (d) Game farms.
  - (e) Golf courses and driving ranges.
  - (f) Trap and skeet and sporting clay shooting facilities.
  - (g) Veterinary clinics.
  - (h) Custom farming services.
  - (i) Mink farms.
  - (j) Rabbitry.
  - (k) Trucking business for transportation of unprocessed agricultural products.
  - (l) Uses conditionally allowed in the A-1 prime agricultural district.
  - (m) Any similar use subject to the approval of the town board.
  - (n) Non-farm single-family dwellings are limited to one lot created per each owned qualifying contiguous 35-acre parcel, or if the bonus plan is implemented, five created clustered lots per each owned qualifying contiguous 35-acre parcel. Single housing and accessory buildings are to be located in a site envelope approved by the plan commission not to exceed 1.5 acres in area and detached from the 35-acre qualifying parcel. Regulations for the bonus plan are located in section 62-186.
    - 1. When an individual owns land in the Town of Beaver Dam in addition to a qualifying parcel as in subsection 62-63(2)(n), the following shall apply:
      - a. The purpose of this section is to concentrate housing in one area thereby keeping larger open areas better suited for agricultural uses.

- b. The total of all lands owned, contiguous or not, shall be used to determine a total increment number of 35-acre parcels.
- c. Total increment number shall be qualifying number of non-farm single-family residential uses to be conditionally allowed.
- d. All conditionally applied for and approved units shall be located on one 35-acre or multiple smaller parcels disregarding when applied for or approved.
- e. Where smaller parcels are used to site approved non-farm residential uses, all of the parcel must be fully parceled before another parcel shall be used for siting.
- f. When the bonus plan is used, the siting of approved units shall be as set forth in this section.

(3) *Area, height and yard requirements.*

Lot: Minimum 35 acres except uses which are conditionally allowed, shall conform to the minimum lot size requirement set forth in section 62-7.

Height: 40 feet maximum, agricultural structures - see section 62-181. Yards:

Rear: Minimum 25 feet.

Side: See section 62-7 (structures used to house animals shall have a 100-foot minimum side yard).

Street: See section 62-122.

**Sec. 62-64 R-1—Single-family residential district**

The primary purpose of this district shall be to promote an area of a generally exclusive single-family residential nature.

(a) *Permitted uses.*

- (1) Single-family dwellings and accessory buildings, including private garages and buildings clearly incidental to the residential use of the property, provided that no such accessory buildings may be used as dwelling units.
- (2) General farming.
- (3) Poultry. Limited to 10 chicken/hens confined to a yard, pen or structure.

(b) *Conditional uses.*

- (1) Churches, cemeteries.
- (2) Governmental and cultural uses such as fire and police stations, community centers, libraries, town halls, parks and playgrounds.
- (3) Home occupations, subject to the requirements in section 62-98.
- (4) Golf courses.
- (5) Public, parochial and private elementary and secondary schools.
- (6) Utilities, excluding electrical power substations.
- (7) Any similar use subject to the approval of the town board.
- (8) Child care limited to, in addition to those of the occupying family, three children.

(c) *Area, height and yard requirements.*

Lot: Width and area of all lots to be determined in accordance with section 62-7.

Height: 40 feet maximum.

Yards:

Rear: Minimum 25 feet.

Side: See section 62-7.

Street: See section 62-122.

**Sec. 62-65 R2—Two-family and multifamily residential district**

The purpose of this district shall be to promote an area of a residential, agricultural and selected two-family and multifamily residential uses.

(a) *Permitted uses.*

- (1) Uses permitted in the R-1 single-family residential district.

(b) *Conditional uses.*

- (1) Uses conditionally allowed in the R-1 single-family residential district.
- (2) Two-family dwellings.
- (3) Manufactured home parks.
- (4) Planned unit developments.
- (5) Multifamily dwellings.
- (6) Bed and breakfast establishments.
- (7) Condominiums (zero side yard lot lines are allowed between units).
- (8) Nursing homes and group housing.
- (9) Day care centers.
- (10) Any similar use subject to the approval of the town board.
- (11) Child care. State license is required and must operate within corresponding requirements.

(c) *Area, height and yard requirements.*

Lot: Width and area of all lots to be determined in accordance with section 62-7.

Height: 40 feet maximum

Yards:

Rear: Minimum 25 feet.

Side: See section 62-7.

Street: See section 62-122.

**Sec. 62-66 C-1—Commercial district**

The purpose of this district shall be to promote an area for retail and service oriented establishments.

(a) *Permitted uses.*

- (1) General farming.
- (2) Parking lots.
- (3) Personal and business service establishments, excluding motor vehicle and farm equipment repair and adult entertainment businesses, with no more than 3,500 square feet of floor space.
- (4) Professional offices with no more than 3,500 square feet of floor space.
- (5) Retail businesses, excluding motor vehicle and farm equipment sales, with no more than 3,500 square feet of floor space.
- (6) Restaurants.

(b) *Conditional uses.*

- (1) Retail businesses, professional offices and personal and business service establishments exceeding 3,500 square feet in floor space.
- (2) Contractors storage yard.
- (3) Farm equipment sales and service.
- (4) Hospitals, clinics and nursing homes.
- (5) Motor vehicle sales and service.
- (6) One residential unit for the owner, commercial tenant, employee or caretaker located in the same building as the business.
- (7) Self-service storage facility.
- (8) Taverns.
- (9) Boat launching areas.
- (10) Use conditionally allowed in the R-1 single-family residential district.
- (11) Any similar use subject to the approval of the town board.
- (12) State-licensed childcare facility.
- (13) Gas stations and convenience stores.

(c) *Area, height and yard requirements.*

Lot: Width and area of all lots to be determined in accordance with section 62-7.

Height: 40 feet maximum.

Yards:

Rear: Minimum 25 feet.

Side: See section 62-7.

Street: See section 62-122.

- (d) *Off-street parking requirements.* Off-street parking shall be provided in accordance with section 62-126 of this chapter.
- (e) *Site plan approval requirement.* To encourage a business use environment that is compatible with the character of the surrounding area, land use permits for permitted and conditional uses shall not be issued without prior review and approval or conditional approval of the site plan by the plan commission. Said review and approval shall be concerned with surrounding land uses, signs, general layout, building plans, building materials, ingress and egress, traffic congestion, parking, loading and unloading areas, screening and landscaping plans, waste management, lighting and provisions for utilities including surface drainage.

**Sec. 62-67 1-1—Industrial district**

The purpose of this district shall be to promote an area for manufacturing and industrial operations.

(a) *Permitted uses.*

- (1) Automobile repair facilities.
- (2) Contractor's office and/or storage yard.
- (3) Food storage warehouses.
- (4) Freight yards and trucking terminals.
- (5) Gas stations.
- (6) General farming.
- (7) Governmental uses such as, but not limited to, police or fire stations, community centers or buildings used for the storage or repair of road maintenance equipment.

- (8) Machinery sales, service and storage facilities.
- (9) Manufacturing establishments engaged in the fabrication, processing, assembly or packaging of a product which is not specified as a conditional use in the industrial district.
- (10) Nurseries, greenhouses and landscaping businesses.
- (11) Parking lots.
- (12) Printing and publishing establishments.
- (13) Processing and packaging of food products.
- (14) Processing and packaging of recyclable materials.
- (15) Recycling collection point.
- (16) Retail sale of products if accessory to and in the same structure as the principal use.
- (17) Self-service storage facility.
- (18) Warehousing, except the storage of chemicals, explosives, flammables and radioactive materials.
- (19) Wholesale establishments.

(b) *Conditional uses and structures.*

- (1) Adult entertainment.
- (2) Airports, aircraft landing fields and hangars.
- (3) Dumps and waste disposal areas.
- (4) Feed mills, granaries and elevators.
- (5) Incinerators.
- (6) Manufacturing, processing, packaging or storage of chemicals, explosives, batteries, asphalt, cement, flammables, paint, poison, rubber, dyes, plastics and radioactive materials.
- (7) Mineral extraction, quarrying.
- (8) One single-family residence or watchman's quarters per site for the owner or proprietor, caretaker/watchman and their family, which is incidental to a permitted or conditional use.
- (9) Planned unit developments.
- (10) Race tracks.
- (11) Salvage yards and storage of inoperable vehicles.
- (12) Sanitary landfill operations.
- (13) Sewage treatment facilities.
- (14) Truck sales and service.
- (15) Utilities, including electrical power substations.
- (16) Any similar use subject to the approval of the town board.

(c) *Area, height and yard requirements.*

Lot size: Width and area of all lots to be determined in accordance with section 62-7.

Height: Maximum 60 feet.

Yards:

Rear: Minimum 25 feet.

Side: See section 62-7.

Street: See section 62-122.

- (d) *Off-street parking requirements.* Off-street parking shall be provided in accordance with section 62-126 of this chapter.
- (e) *Site plan approval requirement.* To encourage a business and industrial use environment that is compatible with the character of the surrounding area, land use permits for permitted and conditional uses shall not be issued without prior review and approval or conditional approval of the site plan by the plan commission. Said review and approval shall be concerned with surrounding land uses, signs, general layout, building plans, building materials, ingress and egress, traffic congestion, parking, loading and unloading areas, screening and landscaping plans, lighting and provisions for utilities including surface drainage.

## **ARTICLE III CONDITIONAL USES**

### **Sec. 62-91 Permit**

- (a) The town plan commission may authorize the zoning administrator to issue a conditional use permit for conditional uses after review and a public hearing, provided that such conditional uses or structures are in accordance with the purpose and intent of this chapter and are found not to be hazardous, harmful, offensive or otherwise adverse to the environment or the value of the area.
- (b) Only this section shall apply when granting a conditional use for an animal livestock facility in the A-1 prime agricultural or A-2 general agricultural districts. The rules, regulations, and laws as set forth in Wisconsin Administrative Code Chapter ATCP 51 are hereby adopted by reference and shall apply as if fully set forth herein. The fees for an animal livestock facility conditional use shall be set by resolution of the town board from time to time, however the fee may not exceed the \$1,000.00 maximum allowed as set forth in ATCP 51.

### **Sec. 62-92 Application**

Applications for conditional use permits shall be made to the zoning administrator on forms provided by him or her. Such applications shall be forwarded to the plan commission by the zoning administrator with the owner(s) and applicant signatures. Such applications shall include where applicable:

- (1) Names and addresses of the applicant and owner(s) of the site, architect, professional engineer, contractor and all property owners within 300 feet.
- (2) Description of the subject site by lot, block and recorded subdivision, certified survey map number or by metes and bounds; address of the subject site; type of structure; number of employees; proposed operation or use of the structure or site; and the zoning district within which the subject site lies.
- (3) Sketch showing all of the information required under section 62-5 for a land use permit and existing and proposed landscaping.
- (4) Additional information as may be required by the plan commission or by the zoning administrator.
- (5) Fee in the amount as set by the town board.

### **Sec. 62-93 Review and approval**

Except for an animal confinement facility, when reviewing a conditional use permit, the town plan commission shall evaluate the proposed use on:

- (1) The maintenance of safe and healthful conditions;
- (2) The prevention and control of water pollution including sedimentation;
- (3) Existing topographic and drainage features and vegetation cover on the site;
- (4) The location of the site with respect to floodplains and floodways of rivers or streams;

- (5) The erosion potential of the site based upon degree and direction of the slope, soil type and vegetation cover;
- (6) The location of the site with respect to existing or future access roads;
- (7) The need of the proposed use for a shoreline location;
- (8) Its compatibility with use on adjacent land;
- (9) The amount of liquid wastes to be generated and the adequacy of the proposed disposal system;
- (10) Structures or improvements within the prime agricultural district shall be consistent with agricultural uses.

**Sec. 62-94 Conditions**

Except for an animal confinement facility, the town plan commission may attach such conditions, in addition to those required elsewhere in this chapter, that it deems necessary in furthering the purpose of this chapter. Violation of any of these conditions shall be deemed a violation of this chapter. Such conditions may include, without limitation because of specific enumeration, specifications for:

- Type of shore cover;
- Increased setback and yards;
- Specified sewage disposal and water supply facilities;
- Landscaping and planting screens or fencing;
- Hours of operations;
- Operational control;
- Sureties;
- Deed restrictions;
- Locations of piers, docks, parking and signs;
- Type of construction or any other requirement necessary to fulfill the purpose and intent of this chapter.

In order to secure information upon which to base its determination, the plan commission may require the applicant to furnish, in addition to the information required for a land use permit, the following information:

- (1) A plan of the areas showing contours, soil types, high water mark, groundwater conditions, bedrock, slope and vegetative covers.
- (2) Location of buildings, parking areas, traffic access, driveways, walkways, open spaces, landscaping, lighting;
- (3) Plans for buildings, sewage disposal facilities, water supply systems and arrangements of operations;
- (4) Specifications for areas of proposed filling, grading or dredging;
- (5) Other pertinent information necessary to determine if the proposed use meets the requirements of this chapter.

The town plan commission in evaluating each application, may request assistance from other local, county, state or federal agencies.

**Sec. 62-95 Public hearings**

Public hearings on applications shall be held by town plan commission. There shall be a published Class 1 notice as provided in Code 985 of the Wisconsin Statutes. The commission shall notify all property owners within 300 feet as listed by the developer in the original application of the time, date and subject matter of the hearing.

### **Sec. 62-96 Compliance**

Compliance with all other provisions of this chapter, such as lot width and areas, yards, height, parking, loading, traffic, highway access and performance standards, shall be required of all conditional uses except as modified by this section.

### **Sec. 62-97 No permit**

Except for an animal confinement facility:

- (a) No permit shall be granted where the proposed use is deemed to be inconsistent or conflicting with neighboring uses for reasons of smoke, odors, noise, vibration, lighting, health hazards or possibility of accidents.
- (b) The existing owner shall notify the zoning administrator at the time of a change of ownership for any business currently operating under a conditional use permit. The plan commission shall review the existing conditional use permit for that business to ensure compliance with this chapter. The plan commission reserves the right to place additional conditions on that business at that time.
- (c) If a use for which a conditional use permit was issued is discontinued for a period of 12 months, a new conditional use permit shall be required for such use to operate again, except for residences that were issued a conditional use permit.

### **Sec. 62-98 Uses**

- (a) *Campgrounds.* Prior to granting a permit for the development or improvement of a campground, the town plan commission shall make the following determinations:
  - (1) The minimum size of a campground shall be 5 acres.
  - (2) The maximum number of campsites shall be 15 per acre.
  - (3) Minimum dimensions of a campsite shall be 25 feet wide by 40 feet long.
  - (4) There shall be one automobile parking space for each campsite.
  - (5) In addition to the requirements of section 62-122 of this chapter, there shall be a minimum yard setback of 40 feet from all exterior lot lines of the campground.
  - (6) It shall conform to the requirements of Code 78, Wisconsin Administrative Code which shall apply until amended and then apply as amended.
  - (7) The screening provisions for manufactured home parks are met.
- (b) *Filling, draining or dredging of wetlands in a conservancy zoning district.* The applicant shall submit the following information with an application for a permit to the town plan commission:
  - (1) Plans for the project prepared by a registered engineer showing and including the following:
    - a. A description of the general and specific nature and extent of the project;
    - b. A scaled, accurate map of the area of the project showing contours if appropriate, soil types, high water marks, nature of vegetative cover and specification of the location and extent of proposed filling, dredging and/or drainage.
  - (2) An impact study which includes an assessment of the impact of the project on:
    - a. Wildlife on the site as well as in the general area;
    - b. Erosion, sedimentation, siltation, drainage and water quality on the site as well as in the general area;
    - c. Flood storage and water retention capacity;
    - d. Vegetation;

- e. Scientific, educational and historic values on the site and/or in the area; and
- f. A thorough statement of the need and justification to drain, fill and/or dredge the wetland in question.

A copy of all submitted information shall immediately be sent to the local office of the department of natural resources along with a request for comment. The plan commission shall await the department of natural resources reply for 15 days before making a decision.

(c) *Home occupations.* In granting a conditional use permit for a home occupation, the plan commission shall make the following determinations:

- (1) The home occupation is secondary to the residential use of the premises and no more than 25 percent of the total floor area of the dwelling unit is devoted to such use.
- (2) The home occupation is totally contained within the residence and does not include any outside storage or use of accessory buildings.
- (3) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding 1 square foot in area, non-illuminated and mounted flat against the wall of the principal building.
- (4) The use may not increase vehicular traffic flow and parking by no more than one additional vehicle at a time and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
- (5) The use shall not involve the use of commercial vehicles for delivery of materials to or from the premises.
- (6) No use shall create noise, dust, vibration, odors, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy exists.
- (7) The home occupation shall employ no nonresident employees.
- (8) There shall be no stock in trade kept or commodities sold, other than incidental supplies necessary for and consumed in the conduct of such home occupation.

(d) *Manufactured home parks.* In granting a permit for the development or improvement of a manufactured home park, the plan commission shall make the following determinations:

- (1) The plan commission shall determine that the town board has issued a license for the proposed park and that not more than three park licenses exist in the town as of the date on which the conditional use permit is considered:
- (2) The minimum size of a park shall be 10 acres;
- (3) The maximum number of manufactured homes shall be 10 per acre;
- (4) Unless adequately screened by existing vegetative cover it shall be screened by:
  - A temporary planting of fast growing materials, capable of reaching a height of 15 feet or more, such as hybrid poplar; and a permanent evergreen planting, such as White or Norway Pine, the individual trees to be such a number and so arranged that within 10 years they will have formed a screen equivalent in opacity to a solid fence or wall. Such permanent planting shall be grown or maintained to a height of not less than 15 feet.
- (5) No mobile home site shall be rented for a period of less than 30 days;
- (6) In addition to the requirements of section 62-122 of this chapter, there shall be a minimum yard setback of 40 feet from all lot lines of the mobile home park;
- (7) All drives, parking areas and walkways shall be hard surfaces;
- (8) It shall conform to the requirements of Code H77, Wisconsin Administrative Code which shall apply until amended and then apply as amended, except where the provisions of this chapter are stricter;

- (9) Minimum dimensions of a mobile home site shall be 50 feet wide by 85 feet long;
- (10) Each mobile home shall be situated on a site so that there is a minimum of 15 feet of yard space between the home and each adjacent site;
- (11) "Skirting", fire-resistant material enclosing all area between the lower edge of the outside walls of a mobile home and the ground, shall be installed on each mobile home within 120 days after placement on a site;
- (12) There shall be 2 surfaced automobile parking spaces for each mobile home.

(e) *Planned unit development.* Planned unit developments (PUD) are allowed as conditional uses in all zoning districts except in any agricultural district, the R-1 single-family district and the conservancy district. PUD is intended to permit the development of planned developments containing not less than 5 contiguous acres under one ownership or control.

Within such planned communities, the location of all residential, commercial, industrial, governmental uses, school sites, parks, playgrounds, recreation areas, parking areas and other open spaces shall be controlled in such a manner as to permit a variety of housing accommodations and land uses in orderly relationship to one another.

- (1) The procedure for obtaining a permit for the development of a PUD shall be as outlined in sections 62-91, 62-92, and 62-93 of this chapter, except that the following requirements shall also apply;
  - a. The applicant shall provide proof that the site under consideration contains a minimum land area of not less than 5 acres under one ownership or control. Additional land area may be added to an existing PUD if it is adjacent or forms a logical addition to an existing PUD. The procedure for an addition shall be the same as if an original application was filed, and all of the requirements of this article shall apply except the minimum acreage requirement of 10 acres.
  - b. The applicant shall furnish 12 copies of a preliminary plan, prepared or certified by a surveyor or engineer duly authorized by the state to practice as such, showing the proposed general layout, the general location of the various types of land uses, the proposed densities of population in the residential areas, a major thoroughfare plan, a public utility plan if public utilities are proposed or required, a storm drainage plan and a plan showing the location of recreation spaces, parks, schools and other public or community uses.
  - c. Following approval of the preliminary plan by the town plan commission, the applicant shall furnish 12 copies of the final plan prepared or certified by a surveyor or engineer duly authorized by the state to practice as such, showing the layout of all major and local thoroughfares and local streets, the location of all buildings, parking areas, pedestrian ways, utility easements, lot lines, open spaces, parks, recreation areas, school sites, playgrounds, the proposed use of all buildings and the metes and bounds of all dedicated areas and lots. The applicant shall also furnish a proposed deed of dedication including restrictions safeguarding the use of open spaces and preventing encroachment upon open spaces between buildings. The applicant shall furnish a deed, or deeds, to land determined by the town to be needed for public elementary and intermediate school purposes. When the final plan and deed of dedication have been approved by the town plan commission as being in conformity with this section and with any changes or requirements of the town plan commission on the preliminary plan it shall be approved for recordation and recorded. Thereafter, no modification may be made in any final plan except by an amended final plan submitted in accordance with this chapter.
- (2) In granting a permit for the development of a PUD the town plan commission shall make the following determinations:
  - a. That the uses shall be as shown on the preliminary plans as required by section 62-94;

- b. That the location of all structures and designated building envelopes shall be as shown on the final plans as required by section 62-94. Building envelopes must be protected by adequate covenants, running with the land, conveyances or dedications;

The proposed location and arrangement of structures shall not be detrimental to existing or prospective adjacent dwellings or to the existing or prospective development of the neighborhood. Open spaces between structures shall be protected where necessary by adequate covenants, running with the land, conveyances or dedications. There shall be no minimum lot size, no minimum setback lines, and no minimum lot width in a PUD.

- c. That the owner and contractors have been bonded to make the required improvements within a reasonable length of time.

(f) *Residential uses in the agricultural districts (A-1 and A-2)*. In granting a conditional use permit for residential uses in the agricultural districts, the commission shall make the following determinations:

- (1) The proposed residential uses will not adversely affect agricultural operations in surrounding areas or be situated that future inhabitants of such residence might adversely be affected by agricultural operations in surrounding areas;
- (2) That the site(s) of the proposed residential uses are not well suited for agricultural use by virtue of wooded areas, topography, shape of parcel, soil characteristics, and similar factors;
- (3) That the site(s) proposed for residential use is particularly well suited for such use as indicated by rolling topography, wooded areas, soil types, vistas, proximity to lakes or streams, or other similar factors, proximity to school bus routes, traffic access and safety and adequacy of area schools to accommodate increased enrollment that might result from such development;
- (4) The proposed residential use would be in conformance with the Town of Beaver Dam Comprehensive Plan.

## **ARTICLE IV SETBACKS, ACCESS AND OFF-STREET PARKING**

### **DIVISION 1 GENERALLY**

#### **Sec. 62-121 Highway and road setbacks**

For the purpose of determining the distance structures shall be set back from highways and roads, the following setbacks shall apply unless the yard regulations or modifications in this chapter allow a lesser yard or setback requirement.

Underground structures not capable of being used as foundations for future aboveground structures may be placed between the setback line and the road or highway.

This section shall not be interpreted so as to prohibit the planting and harvesting of field crops, shrubbery or trees; provided, however, that no building or structure, trees or shrubbery shall be so located, maintained or permitted to grow so that the view across the sectors at intersections shall be obstructed.

#### **Sec. 62-122 Highway and road setback distances**

The setback distance shall be as follows:

- (1) *Town roads, except urbanized sections*: Minimum 75 feet from the centerline of the road or 42 feet from the edge of the right-of-way, whichever distance is greater.
- (2) *State or county highways, except urbanized sections*: Minimum 100 feet from the centerline of the highway or 67 feet from the edge of the right-of-way, whichever distance is greater.

- (3) *Urbanized roads or highways*: Minimum 60 feet from the centerline of the road or highway or 27 feet from the edge of the right-of-way, whichever distance is greater. The following listed roads or sections of roads/highways are the current urbanized roads of the town.
- a. CTH D, beginning at the C. & NW RR easterly 550 feet.
  - b. CTH D or S. Madison Street, beginning at the city [town] limits southwesterly 1,550 feet.
  - c. North Crystal Lake Road, at the junction of STH 33 northerly 280 feet.
  - d. STH 33, beginning at the junction with N. Crystal Lake Road westerly, along the northerly side, 1,630 feet.
  - e. All of Airport Road, Golf View Terrace, Hubert Drive, McKinley Beach Road, Oak Lane Road, S. Sunset Point Road, Sunset Point Road, and Sunset Boulevard.
  - f. CTH G, from STH 151 westerly 2,323 feet to CTH D.
  - g. CTH D, from CTH G southwesterly 1,743 feet.
  - h. STH 33, at the north city [town] limits of Beaver Dam, northwesterly to McKinley Beach Road.

**Sec. 62-123 Building setbacks from the water**

For lots that abut on navigable water:

- (1) There shall be setbacks from both the streets and water.
- (2) All buildings and structures shall comply with the applicable required setbacks from navigable waters as listed in the Dodge County Shoreland Ordinance.

**Sec. 62-124 Loading requirements**

In all districts adequate loading areas shall be provided so that all vehicle loading, maneuvering or unloading does not project into traffic lanes.

**Sec. 62-126 Off-street parking**

Each use shall provide the following minimum off-street parking spaces. Each parking space shall be at least 200 square feet in area.

- (1) *Convenience stores*: One space for each 200 square feet of floor area; plus 2 spaces for each gas pump.
- (2) *Dwellings*: 2 spaces for each dwelling unit.
- (3) *Industrial uses and warehouses*: One space for each employee on the premises at a maximum employment on the main shift.
- (4) *Motels and resorts*: One space for each unit.
- (5) *Restaurants, taverns and similar establishments*: One space for each 50 square feet of floor space devoted to patrons.
- (6) *Retail business and service establishments*: One space for each 200 square feet of floor area.

Any use not specifically named shall be assigned to the most appropriate classification by the plan commission.

Combinations of any of the above uses shall provide the total of the number of spaces required for each individual use.

Location of off-street parking shall be on the same lot as the principal use, or on a lot adjacent to the principal use.

## ARTICLE V MODIFICATIONS AND MEASUREMENTS

### Sec. 62-181 Height

The district height limitations stated elsewhere in this chapter may be exceeded, but such modification shall be in accord with the following:

- (1) Agricultural structures, such as barns, silos, and windmills shall not exceed in height their distance from the nearest lot line.
- (2) Architectural projections, such as spires, belfries, parapet walls, domes, flues, and chimneys, are exempt from the height limitations of this chapter.
- (3) Communication structures, such as radio and television transmission and relay towers, aerials, and observation towers, shall not exceed in height three times their distance from the nearest lot line. In addition, no tower or structure or any projecting aerial shall exceed 500 feet in height in any area of the town.
- (4) Essential services, utilities, water towers, electric power and communication transmission lines are exempt from the height limitations of this chapter.
- (5) Public or semi-public facilities such as schools, churches, hospitals, monuments, libraries, governmental offices and stations, may be erected to a height of 60 feet.
- (6) Special structures, such as elevator penthouses, gas tanks, grain elevators, scenery lofts, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations, smoke stacks, and flagpoles, are exempt from the height limitations of this chapter.

### Sec. 62-182 Yards

The yard requirements stated elsewhere in this chapter may be modified as follows:

- (1) Architectural projections, such as chimney flues, sills, eaves, belt courses, and ornaments, may project into any required yard; but such projection shall not exceed 2 feet.
- (2) Accessory uses and detached accessory structures located in platted subdivisions or on lots less than 2 acres in area are permitted in the rear and side yards of all lots. When located in a side yard, they shall not be closer to the lot line than the minimum required side yard for the principal structure and in any case they shall not be closer than 10 feet to the principal structure, shall not exceed 20 feet in height, shall not occupy more than 10% of the rear yard area, and shall not be closer than 3 feet to any lot line except when abutting an A-1 or A-2 district then subsection 54-155 shall apply.
- (3) Trees and shrubs are exempt from the yard requirements except when abutting an A-1 or A-2 district, then subsection 54-155 shall apply.
- (4) Uncovered stairs, landings and fire escapes may project into any yard, but not to exceed 6 feet and not closer than 3 feet to any lot line.
- (5) Residential fences are permitted on property lines but shall not exceed a height of 6 feet in the rear or side yard, shall not exceed a height of 4 feet in the street yard and shall not be closer than 2 feet to any public right-of-way.
- (6) Security fences in industrial or commercial zoned areas are permitted on the property lines but shall not exceed 10 feet in height and shall be of an open type similar to woven wire or wrought iron fencing.
- (7) Essential service facilities such as surface, overhead, and underground facilities but not including any buildings, towers, or antennas, may be located within any required setback on the condition that the owner of such facilities within any setback that abuts a street shall remove all construction, additions, and replacements of these facilities at the owner's expense, when necessary for the improvement of the road, street, or highway.

### **Sec. 62-183 Additions**

Additions in the street yards to existing structures shall not project beyond the average of the existing street yards on the abutting lots or parcels.

### **Sec. 62-184 Average street yards**

The required street yards may be decreased to an average of the street yards of the abutting structures on each side, if within 200 feet of the proposed structure. However, in no case shall a structure be allowed within the road right-of-way.

### **Sec. 62-185 Density calculation in the A-1 and A-2 agricultural zoning districts**

Density is calculated by dividing the number of proposed dwelling units on a site by the gross area of the lot. For the purposes of calculating residential density of development, the areas lying within the bed of lakes, ponds or streams and existing road rights-of-way within a site shall be excluded in the gross area of the lot.

The original lot acreage will be divided by the required density standard to determine the number of lots available to be created. If the resulting quotient is a whole number, the owner may create that number of lots. Fractions do not count towards an additional lot.

The plan commission may require that a restriction be placed on the certified survey map or be a deed restriction, which would not allow further divisions of the remaining land after the maximum allowed density on the property is reached.

### **Sec. 62-186 Bonus density plan**

(a) *Purpose.* The intent of the open space subdivision is to provide an optional method of residential development that allows development at the normal density and yet have a lesser percentage of the property contained within individual lots than in a conventional subdivision. This will maintain rural character, protect agriculture, preserve open space, and protect environmentally sensitive areas.

(b) *Eligibility.* Qualifying developments up to five lots within the A-1 prime agricultural and A-2 general agricultural zoning districts may obtain a waiver of the maximum density allowed in the underlying base zoning district and of platting requirements if the development is consistent with the town's comprehensive plan and all of the following conditions are met:

- (1) The parcel to be developed must contain at least 75 acres if located in the A-1 prime agricultural district or at least 35 acres if located in the A-2 general agricultural district, or a proportionate number of acres if partially located in both districts.
- (2) The units must be located to minimize adverse impacts on any prime agricultural land, sensitive areas, and wildlife habitats;
- (3) The units must be clustered to preserve at least 70 percent of the site in agriculture or open space;
- (4) At least 65 acres of a parcel located in the A-1 prime agricultural district or at least 25 acres of a parcel located in the A-2 general agricultural district, or a proportionate number of acres if partially located in both districts, shall be permanently deed restricted for agricultural or open space use.
- (5) Prior to construction of the units, such agricultural land or open space shall be permanently preserved by the recording of a conservation easement or deed restriction, subject to plan commission decision.

- (6) Reserved.
- (7) The units must be reasonably buffered from adjacent agricultural uses.
- (8) The proposal shall dedicate a new town road built to town road standards, and all proposed lots shall front on the proposed new road.
- (9) The units may share a common waste disposal system, if minimum lot size reductions are proposed.
- (10) Maximum lot sizes shall be limited to 1.5 acres.

(c) *Lot size and design.*

- (1) *Lot sizes.* Reduced lot sizes, down to 32,000 square feet, may be approved by the plan commission. Minimum lot size requirements shall be based on adopted area plans, facility adequacy, site-specific conditions, and the need, if any, to protect adjacent agricultural operations.
- (2) *Flexible lot size.* Flexibility in lot size is encouraged to be sensitive to the natural environment, adapt to the natural topography of the site, accommodate the mix of residential land uses and housing types proposed, and be compatible with agriculture and other existing uses.
- (3) *Open space.* To the greatest degree possible, the protected open space shall include any prime agricultural lands and shall be located in areas adjacent to existing agricultural operations.
- (4) *Reserved.*
- (5) *Location of clustered lots.* Clustering shall not result in more than five clustered lots adjacent to one another, unless the plan commission determines that clustering more units together is appropriate, as in [subsections] 62-62(2)(h)1., or 62-63(2)(n)1., to ensure consistency with the town's comprehensive plan. Each group or groups of clustered lots shall be separated from one another by protected open space.
- (6) *Natural areas and natural buffer areas.* New structures shall not be located in the middle of natural areas containing predominantly woods, brush, or grasslands, but near the edge of such areas to leave the largest practicable area of undisturbed wildlife habitat while still shielding the new structure from public view. In addition, new structures shall not be located within narrow strands of trees, grasslands, or brush lands that act as links between two or more larger areas of forest, grasslands, or brush lands.

(d) *Development areas.* Development areas shall contain residential and related land uses, roads, and parking areas, and may contain a portion of the required open space. Agricultural uses and environmentally sensitive areas shall not be included in the development area of a cluster subdivision.

(e) *General approval criteria for density bonuses.* Density bonuses may be approved by the plan commission upon consideration of the following factors:

- (1) The proposed cluster subdivision would be consistent with the town comprehensive plan or plan components.
- (2) The proposed residential development would be consistent with the character of the area.
- (3) Proposed residential uses would not conflict with surrounding land uses.
- (4) The proposed cluster subdivision would be adequately spaced from other cluster subdivisions.
- (5) The proposed site is suitable for a clustered residential subdivision in terms of sanitary systems, road access, utilities, and other essential services.
- (6) Soil conditions, hydrology, and topography are suitable to accommodate the proposed cluster subdivision.
- (7) The proposed cluster subdivision would not have a detrimental effect on natural resources, sensitive natural areas, or views of important natural areas.

## ARTICLE VI SIGNS

### **Sec. 62-211 Permit required**

No signs shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without obtaining a sign permit, except those signs allowed under section 62-212.

### **Sec. 62-212 Signs allowed in all zoning districts without a sign permit**

The following signs are allowed in all zoning districts without a sign permit, but are subject to the following regulations:

Signs over show windows or doors of a nonconforming business establishment announcing without display or elaboration only the name and occupation of the proprietor, not to exceed 2 feet in height and 10 feet in length.

- (1) Agricultural signs pertaining to the sale of agricultural products on a farm or to membership in agricultural or agricultural-related organizations, not to exceed 32 square feet in display area on all sides for any one farm.
- (2) Real estate signs not to exceed eight square feet in display area on any one side nor 16 square feet in display area on all sides which advertise the sale, rental or lease of the premises upon which said signs are temporarily located and limited to one such sign for each premises.
- (3) Name, occupation and warning signs not to exceed 4 square feet in display area on any one side nor 8 square feet in display area on all sides; limited to one such sign for each premises.
- (4) Bulletin boards of public, charitable or religious institutions, not to exceed 12 square feet in display area on all sides; limited to one such sign for each premises.
- (5) Memorial signs, tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal and affixed flat against a structure.
- (6) Official signs, such as traffic control, parking restrictions, information and notices.
- (7) Temporary signs or banners are permitted when authorized by the zoning administrator for a period not to exceed 45 days.

No such sign mentioned in this section shall be located closer than 2 feet from any public road right-of-way or exceed 10 feet in height. These requirements shall not apply to official signs.

### **Sec. 62-213 Signs allowed in all zoning districts with a sign permit**

The following signs are allowed in all zoning districts providing a sign permit has been issued and shall be located a minimum of 40 feet from the edge of the traveled way or 2 feet from the road right-of-way, whichever distance is greater:

- (1) Off-premises directional signs which contain only the name of the establishment, logo or directional information useful to the traveler in locating the site, such as mileage, route numbers or exit numbers providing that:
  - (a) No more than two such signs relating to any one establishment shall be located in the approaching direction along any one highway.
  - (b) Such sign shall be located within 5 air miles of the subject site.
  - (c) No two directional signs facing the same direction of travel shall be spaced less than one mile apart. However, more than one sign may be placed on the same support provided the total square footage does not exceed the allowable area.
  - (d) No such sign shall be located within 300 feet of a highway interchange, intersection at grade, rest area or wayside.
  - (e) No such sign shall exceed 10 feet in height.

- (f) No such sign or signs in aggregate if facing the same direction of travel, shall exceed 12 square feet in display area.
- (2) On-premises identification signs for residential subdivisions, parks, multifamily dwelling units, manufactured home parks, industrial parks, schools, hospitals, churches and for community identification not to exceed 24 square feet in display area on all sides; limited to one such sign for each premises; and shall indicate only the name and/or address of the premises, logo, slogan, motto or other information pertinent to identifying the premises. Community identification signs may include service club organization symbols as part of the sign.
- (3) Temporary development signs for residential subdivisions and commercial and industrial developments not to exceed 64 square feet in display area on any one side which advertise the sale or lease of the premises on which the sign is temporarily located and limited to one sign for each premises.

**Sec. 62-214 Signs permitted in the commercial and industrial districts**

The following signs are permitted in the industrial and commercial districts with a permit and are subject to the following regulations:

- (1) Wall signs placed against the exterior walls of buildings shall not extend more than 12 inches outside of a building's wall surface, shall not exceed 200 square feet in display area for any one premises, and shall not exceed 20 feet in height above the mean centerline street grade.
- (2) Projecting signs fastened to, suspended from, or supported by buildings shall not exceed 100 square feet in display area on all sides for any one premises; shall not extend more than 6 feet in any direction; shall not be less than 10 feet from any side or rear lot line; shall not exceed a height of 20 feet above the mean centerline street grade; and shall not be less than 10 feet above a sidewalk or other pedestrian way nor 15 feet above a driveway or an alley.
- (3) Ground signs, limited to one sign for each premises; shall not exceed 20 feet in height; shall not be located closer to the road right-of-way than 27 feet; shall meet all side and rear yard setback requirements; and shall not exceed 100 square feet in display area on any one side nor 200 square feet in display area on all sides.
- (4) Window signs shall be placed only on the inside of commercial buildings and shall not exceed 25 percent of the glass area of the pane upon which the sign is displayed.

Combinations of any of the above signs shall meet all the requirements for the individual sign.

**Sec. 62-215 Development standards**

(1) *Determining area of signs.* The area of a sign shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire sign, including the border and trim, but excluding supports.

(2) *Traffic.* Signs shall not resemble, imitate, or approximate the shape, size, form or color of railroad or traffic signs, signals, or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or traffic devices. No signs shall be erected, relocated or maintained so as to prevent free ingress to or egress from any door, window, or fire escape; and no sign shall be attached to a standpipe or interfere with traffic visibility nor be lighted in such a way as to cause glare or impair driver visibility upon public or private ways.

(3) *Moving, flashing or video signs.* No sign shall be erected which has any flashing or moving parts except those giving public service information such as time, date, temperature, weather, or similar information.

(4) *Existing signs.* Signs lawfully existing at the time of the adoption or amendment of this chapter may be continued although the use, size, or location does not conform to the provisions of this chapter.

However, it shall be deemed a nonconforming use or structure and the provisions of section 62-243 shall apply.

(5) *Signs not in use.* Signs which advertise or identify a business or similar activity must be removed within 60 days of the date said business or similar activity ceases operation or vacates the premises. The removal of the sign shall be the responsibility of the owner of the property on which the sign is located.

(6) *Sign location.* No sign mentioned in article VI shall be located in, on or above a public road right-of-way or navigable body of water, except for official signs.

## **ARTICLE VII NONCONFORMING USES, STRUCTURES AND LOTS**

### **Sec. 62-241 Existing nonconforming uses**

The lawful nonconforming use of a structure, land or water, existing at the time of the adoption or amendment of this chapter may be continued although the use does not conform with the provisions of this chapter; however, only the portion of the land or water in actual use may be so continued and the structure may not be extended, enlarged, reconstructed, substituted, moved, or structurally altered except when required to do so by law or order or so as to comply with the provisions of this chapter.

Total lifetime structural repairs or alterations, shall not exceed 50 percent of the municipality's assessed value of the original structure at the time of its becoming a nonconforming use unless it is permanently changed to conform to the use provisions of this chapter.

### **Sec. 62-242 Abolishment or replacement**

If such nonconforming use is discontinued or terminated for a period of 12 months, any future use of the structure, land or water, shall conform to the provisions of this chapter. When a nonconforming use is damaged by fire, explosion, flood, or any other event to the extent of more than 50 percent of its current assessed value, it shall not be restored except so as to comply with the use provisions of this chapter.

### **Sec. 62-243 Existing nonconforming structures**

The lawful nonconforming structure existing at the time of the adoption or amendment of this chapter may be continued although its size or location does not conform with the lot width, lot area, yard, height, setback, parking and loading, and access provisions of this chapter.

Additions and enlargements to existing nonconforming structures are permitted and shall conform with the required buildings setback lines along roads, water and highways and the yard, height, parking, loading and access provisions of this chapter.

Existing nonconforming structures which are damaged or destroyed by fire, explosion, flood or any other event, may be reconstructed and insofar as is practicable shall conform with the required building setback lines along streets and highways and the yard, height, parking, loading and access provisions of this chapter.

### **Sec. 62-244 Changes and substitutions**

Once a nonconforming use or structure has been changed to conform, it shall not revert to a nonconforming use or structure. Once the board of appeals has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use the substituted use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the board of appeals.

### **Sec. 62-245 Vacant substandard lots**

In any zoning district, except the commercial and industrial district, a single-family dwelling and its accessory structures may be erected on any vacant legal lot or parcel of record in the county register of deeds office before the effective date or amendment of this chapter subject to the following requirements:

- (a) The lot must be in separate ownership from abutting lands. If abutting lands and the substandard lot are owned by the same owner, the substandard lot shall not be sold or used without full compliance with the area requirements of this chapter;
- (b) The lot must be at least 50 feet wide and 7,500 square feet in area;
- (c) All the dimensional requirements of this chapter shall be complied with insofar as practical, as determined by the plan commission.

## ARTICLE VIII BOARD OF APPEALS

### Sec. 62-281 Establishment; terms; and members

- (a) *Established.* There is hereby established a board of appeals for the town for the purpose of hearing appeals, applications for variances, and exceptions to the provisions of the Code of the Town of Beaver Dam.
- (b) *Composition of the board.*
  - (1) Five residents of the town shall be appointed to the board by the town chairman and confirmed by the town board.
  - (2) Two members of the board may be members of the town board.
  - (3) Two residents of the town shall be appointed to the board as alternates by the town chairman and confirmed by the town board and shall act when a regular member is absent or refuses to vote.
  - (4) Chairman. The town chairman shall designate a member of the board its chairman.
- (c) *Oaths.* Official oaths shall be taken by all members in accordance with Wis. Stats. § 19.01 within 10 days of appointment.
- (d) *Terms.* Terms of appointments shall be for three years with approximately one-third of the members' terms appointed each year and expiring each year.
- (e) *Training.* It shall be required that to maintain membership on the board of appeals, each member shall participate in one training exercise per year. The training may be at a Wis-Line site, WTA officials meeting, attending a county board of adjustment meeting, attending a local training exercise, or requesting literature for board of appeals members from the town clerk. Without participating in a training exercise, the member is eligible to be dismissed from the board of appeals.
- (f) *Vacancies.* Vacancies shall be filled for the expired term in the same manner as appointments for a full term.
- (g) *Absences.* Board of appeals members may only have three unexcused absences per year from scheduled meetings so as to maintain membership on the commission.
- (h) *Per diems.* Board of appeals members and alternates shall be compensated for scheduled meetings so attended with a per diem as set by section 2-6 of this Code. Additional meetings attended for review, education, and/or research may be paid as a per diem to a member when approved by the town board. In addition, mileage caused from transportation to meetings shall be compensated for as set by the state.
- (i) *Land use administrator.* The zoning administrator shall attend all meetings for the purpose of providing technical assistance when requested by board.
- (j) A secretary shall be appointed by the board of appeals to record all actions and decisions of the board. These records shall be filed in the offices of the Town of Beaver Dam. Compensation for the secretary if other than a board of appeals member shall be set by resolution of the town board from time to time.

**Sec. 62-282. Organization.**

The board of appeals shall organize and adopt rules of procedure in conformance to Wis. Stats. § 62.23(7)(e)1-15.

**Sec. 62-283. Rules.**

(a) The board of appeals shall meet at the call of the chairperson, and at such other times as the board of appeals may determine, at a fixed time and place.

(b) All meetings of the board of appeals shall be open to the public unless properly convened into closed session.

(c) Any public hearings which the board of appeals is required to hold shall be held in the town hall or other place convenient to the location or locations to be considered at such public hearing, and a full description of the location of such place of hearing by name, address or other commonly known means of identification, shall be included in the notice given of such hearing. Other matters upon which the board of appeals is required to act may also be heard to any such hearing provided that no undue hardship is created for any appellant by reason of the location of such hearing, and provided further that such matters are included in the notice given of such hearing.

(d) The board of appeals secretary shall keep minutes of each meeting and its proceedings, documenting a record of all actions, the reasons for the board's determination, and its finding of fact showing the vote of each attending member upon each question, or if absent or failing to vote, indicating such fact. These records shall be immediately filed in the office of the board of appeals and shall be a public record.

(e) Reserved.

(f) The board of appeals may adopt such other rules as are necessary to carry into effect the regulations of the town board.

(g) In the case of all appeals, the board of appeals may call upon the town board, plan commission or zoning administrator for all information pertinent to the decision appealed from.

**Sec. 62-284 Powers**

The board of appeals shall have the following powers:

To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by administrative official in the enforcement of this chapter.

To hear and decide special exception to the terms of the code upon which such board is required to pass under this chapter.

To authorize upon appeal in specific cases such variances from the terms of the code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the code will result in practical difficulty or unnecessary hardship, so that the spirit of the code shall be observed, public safety and welfare secured, and substantial justice done.

The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the code, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

The board may reverse, affirm, or wholly or partly modify the requirements appealed from and may issue or direct the issuance of a permit.

The board may request assistance from other town or county officers, departments, commissions and boards.

The chairperson may administer oaths and compel the attendance of witnesses.

### **Sec. 62-285 Appeals and applications**

Appeals from the decision of the zoning administrator, plan commission or the town board concerning the literal enforcement of this chapter may be made by any person aggrieved or by an officer, department, board or bureau of the town. Such appeals shall be filed with the secretary and the officer from whom the appeal is taken within 30 days after the date of written notice of the decision or order of the zoning administrator or the town board. Applications may be made by the owner or lessee of the structure, land or water to be effected at any time and shall be filed with the zoning administrator. Such appeals and applications shall include the following:

- (1) Names and addresses of the appellant or applicant and all landowners within 300 feet of the parcel on which the appeal (variance) is requested for.
- (2) Sketch showing all the information required under section 62-5 for a land use permit. When deemed necessary by the land use administrator or the board of appeals, the plot plan shall be required to be prepared to scale by a registered surveyor licensed by the State of Wisconsin.
- (3) Additional information which was required for the decision appealed from or may be required by the board of appeals.
- (4) Fee in the amount as set by the town board by resolution.

### **Sec. 62-286 Hearings**

The board of appeals shall fix a reasonable time and place for the hearing, give a Class 1 notice thereof as provided in Wis. Stats. ch. 985. Notice of the hearing should be provided to the owner, applicant, all landowners within 300 feet of the parcel on which the variance is requested for, the zoning administrator and the town board. At the hearing the applicant or the appellant may appear in person, by agent, or by attorney.

### **Sec. 62-287 Decisions**

The board of appeals shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the board's decision to the appellant or applicant, the zoning administrator and the town board.

Conditions may be placed upon any land use permit ordered or authorized by this board.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in this chapter. The grounds of every such determination shall be stated.

Variances granted and unused, and/or if their use is discontinued for 12 months, shall become null and void as if never granted.

Variance granted prior to the adoption of this ordinance [March 10, 2009] shall become null and void, as if never granted, if unused anytime for a 12-month period after the effective date of this ordinance's [March 10, 2009] adoption, being its publication date.

### **Sec. 62-288 Review by court of record**

Any person or persons aggrieved by any decision of the board of appeals may commence an action seeking the remedy available by certiorari. Such action shall be commenced within 30 days after the filing of the decision in the office of the board of appeals.

### **Sec. 62-289 Per diem**

Members of the board of appeals shall be compensated for scheduled meetings so attended with a per diem as set by resolution from time to time by the town board. Additional meetings attended for review and or research may be paid as a per diem to a member when approved by the town board. In addition, mileage caused from transportation to meetings shall be compensated for as set by the state.

## **ARTICLE IX PLAN COMMISSION**

### **Sec. 62-311 Composition**

(a) The plan commission shall consist of seven regular members and two alternates appointed by the town board chairperson, who shall also appoint the commission's chairman. All appointed members shall be approved by the town board. Five of the regular members and one of the alternates must be citizens of the town. Two of the regular and one of the alternates may be elected or appointed town officials. All members shall be persons of recognized experience and qualifications.

(b) Members of the commission shall be appointed to hold office for a period of three years. Appointments shall be made by the town board chairperson during the month of April or at any other time if a vacancy occurs during the middle of a term.

(c) Per diem. Members and alternate members of the plan commission shall be compensated for scheduled meetings so attended with a per diem as set forth in section 2-6 of this Code. Additional unscheduled meetings attended for review, education or research may be paid as a per diem to a member when approved by the town board. In addition, mileage caused from transportation to meetings shall be compensated for as set by the state.

(d) Absences. To maintain membership, plan commission members shall not have more than three unexcused absences per year from scheduled meetings

(e) Training. To maintain membership on the plan commission, it shall be required that each member participate in one training exercise per year. The training may be at a Wis-Line site, WTA officials meeting, attending a county plan commission meeting, local plan commission training exercise, or request plan commission reference material through the town clerk.

### **Sec. 62-312 Rules and organization**

The plan commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations. Such record shall be a public record. Meetings of the commission shall be held at the call of the chairperson and at such other times as the commission may determine. The plan commission shall have the power and authority to employ experts and a staff.

### **Sec. 62-313 Functions**

The plan commission shall have the following functions and duties:

- (1) To make and adopt a comprehensive plan for the physical development of the town.
- (2) To authorize the zoning administrator to issue a conditional use permit in accordance with Article III.
- (3) To make a recommendation to the town board on any petition to amend this chapter or change the district boundaries.
- (4) Administer the provisions as provided for in chapter 54, subdivisions, of this Code.

## ARTICLE X CHANGES AND AMENDMENTS

### Sec. 62-331 Authority

Whenever the public necessity, convenience, health, safety or general welfare require, the town board may, by ordinance, change the district boundaries or amend, change or supplement the regulations established by this chapter or amendments thereto in accordance with Wis. Stats. § 62.23(7).

Such change or amendment shall be subject to the review and recommendation of the town plan commission.

### Sec. 62-332 Initiation

A petition for amendment may be made by any property owner in the area to be affected by the amendment, by the town board or by the town plan commission.

### Sec. 62-333 Petitions for amendment

Petitions for any change to the district boundaries or amendments to the regulations shall be filed with the town clerk, who shall refer them to the town plan commission. Such petitions shall describe the premises to be rezoned or the regulations to be amended, list the reasons justifying the petition, specify the proposed use and have attached the following:

- (1) Plot plan drawn to a scale of 1 inch equals 100 feet showing the area proposed to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts and the location and existing use of all properties adjoining and/or within 500 feet of the area proposed to be rezoned is required. The town board or plan commission may at their request require the plot plan be prepared to scale by a registered surveyor licensed by the State of Wisconsin.
- (2) Owners' names and addresses of all properties lying within 300 feet of the area proposed to be rezoned.
- (3) Additional information required by the town plan commission or the town board.
- (4) Fee in the amount as set by the town board.

### Sec. 62-334 Hearings and board action

(1) The town plan commission shall hold a public hearing upon each petition. Notice of the time and place of such a hearing shall be given by publication in the town of a Class 2 notice, under Code 985 of the Wisconsin Statutes. Notice of the hearing should be provided to the owner, applicant, all owners of property within 300 feet of the subject site, the zoning administrator and the town board.

(2) *Recommendations.* As soon as possible after the public hearing the town plan commission shall act on such petition either approving, modifying or disapproving the petition. The recommendation shall be made in writing to the town board.

(3) *Action by the town board.* After careful consideration of the town plan commission recommendations, the town board shall vote on the passage of the proposed change or amendment.

(4) *Approval by the county board.* After approval by the town board, the county board shall approve the proposed change or amendment to become effective.

### Sec. 62-335 Protest

In case of a protest against an amendment proposed, duly-signed and acknowledged by the owners of 20 percent or more either of the areas of the land included in such proposed amendment, or by the owners of 20 percent or more of the area of the land immediately adjacent extending 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 amendment shall not become effective except by the favorable vote of three-fourths of the members of the board voting on the proposed change.

**Sec. 62-336 Per diems**

Members of the plan commission shall be compensated for scheduled meetings so attended with a per diem as set by resolution from time to time by the town board. Additional unscheduled meetings attended for review and or research may be paid as a per diem to a member when approved by the town board. In addition, mileage caused from transportation to meetings shall be compensated for as set by the state.

**ARTICLE XI PERFORMANCE STANDARDS**

**Sec. 62-361 [Manner of conducting activities; violation]**

(1) All activities involving the production, processing, cleaning, testing or repair of materials, goods or products shall be conducted in such a manner whereby there shall be no danger of fire or explosion, no offensive noise, vibration, smoke, dust, odor, glare, or heat detrimental to the public health, safety, comfort or general welfare of the immediate neighborhood or community.

(2) A violation of this section which is so flagrant as to constitute a potential nuisance shall be the subject of a nuisance action brought by the town's attorney on behalf of the town.

Chapter 63

**ARTICLE I MOBILE TOWER SITING AND RADIO BROADCAST SERVICE FACILITY OVERLAY DISTRICT REGULATIONS**

**Sec. 63-1 General**

(a) *Purpose.* The purpose of the mobile tower siting and radio broadcast service facility overlay district regulations is to regulate the following:

- (1) The siting and construction of any new mobile service support structure and facilities;
- (2) The substantial modification of an existing support structure and mobile service structure and mobile service facility (class 1 collocation);
- (3) The collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities (class 2 collocation).
- (4) The siting, placement, construction or modification of radio broadcast service facilities.

(b) *Intent.* The intent of the mobile tower siting and radio broadcast service facility overlay district regulations are:

- (1) To encourage the construction and location of mobile service facilities, mobile service support structures and radio broadcast service facilities in areas where the adverse impact on the environment, the community and the citizens of Town of Beaver Dam is minimized.
- (2) To maintain and ensure that a nondiscriminatory, competitive and broad range of mobile services and high quality mobile service infrastructure consistent with the Federal Telecommunications Act of 1996 are provided to serve the community, as well as the Town of Beaver Dam's police, fire, and emergency response network quickly, effectively and efficiently.
- (3) To provide a process of obtaining the necessary permits for mobile service facilities, support structures and radio broadcast service facilities while at the same time protecting the legitimate interests of the citizens of Town of Beaver Dam.

- (4) To encourage the use of alternative support structures, collocation of new antennas on existing support structures, and construction of support structures with the ability to locate three or more providers.
- (5) To promote the public health, safety and general welfare of the citizens of Town of Beaver Dam with the minimum practical regulation that is necessary to accomplish this objective.

*(c) Applicability and exemptions.*

- (1) The requirements of the mobile tower siting and radio broadcast services overlay district regulations shall apply to all towers, antennas, and other communication facilities in the Town of Beaver Dam Land Use Code in accordance with the authority granted by Wis. Stats. § 59.69.
- (2) Towers and antennas that are under 70 feet in height and are owned and operated by federally licensed amateur radio station operators or are receive-only antennas shall be exempt from these regulations.
- (3) Towers and antennas for which a permit has been properly issued by the town prior to the effective date of this chapter shall not be required to meet the requirements of this chapter.
- (4) These overlay district regulations are not intended to regulate residential satellite dishes or residential television antennas that are used privately. Additionally, the regulations in this overlay district are not intended to regulate satellite dishes or antennas whose regulation is prohibited by [Wis. Stats.] § 59.69(4d) or its successor sections of the Wisconsin State Statutes or as permitted by federal law.
- (5) Mobile services providing public information coverage of news events of a temporary or emergency nature are exempt from these regulations.

*(d) Principal or accessory use.* Towers and antennas may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with zoning regulations, including, but not limited to, setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed and antennas that are installed in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use or structure.

*(e) Definitions.* All definitions contained within Wis. Stats. §§ 66.0404(1) and 66.0406(1) are hereby incorporated in this overlay district by reference.

## **Sec. 63-2 Administration**

*(a) Permit requirements.*

- (1) A conditional use permit shall be required for new support structures and facilities and for a class 1 collocation.
- (2) A land use permit shall be required for a class 2 collocation.
- (3) A conditional use permit shall be required for the placement, construction, or modification of radio broadcast service facilities.

*(b) Application process for new mobile service support structures and facilities and for class 1 collocations.*

- (1) All conditional use permit applications for new mobile service support structures and facilities and for class 1 collocation projects shall be submitted to the land use administrator upon forms provided by the department. Applications for a conditional use permit for new mobile service support structures and facilities and for class 1 collocation projects shall include the following:

- a. The name, and business address of, and the contact individual for, the applicant.
  - b. The location of the proposed or affected support structure.
  - c. The location of the proposed mobile service facility.
  - d. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
  - e. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
  - f. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile support structure that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- (2) *Completed applications.* If an applicant submits an application to the department for a conditional use permit to engage in an activity described in this section of the chapter, which contains all of the information required under this section, the department shall consider the application complete. If the department does not believe that the application is complete, the department shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- (3) *Town responsibilities.* Within 90 days of receipt of a complete application, the department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the department may agree in writing to an extension of the 90-day period.
- a. Review the application to determine whether the proposed project complies with all applicable aspects of the chapter, subject to the limitations in this section. If the application is determined to be incomplete, the land use administrator shall notify the developer/applicant of the application deficiencies and no further action shall be taken on the application until the required information is submitted and the application is determined to be complete.
  - b. The land use administrator shall review each complete application in light of the approval criteria of section 2.3.6.F [of the Land Use Code] and shall provide a report to the committee recommending approval, approval with conditions or denial of the application. Failure of the land use administrator to provide a report to the committee shall constitute a recommendation for approval of the application.
  - c. Public hearings for conditional use permit applications shall be held within 45 days of receipt by the department of a complete application and shall receive written and published notice in accord with the applicable Wisconsin State Statutes and the general notice provisions of section 2.2.6 [of the Land Use Code]. In addition, the land use administrator shall notify all property owners within 300 feet of the subject property boundary of the time, date and subject matter of the hearing. Furthermore, the land use administrator shall notify the county highway department and/or the state department of transportation for any development within 500 feet of an existing or proposed right-of-way of freeways, expressways, interstate and controlled access traffic-ways, and within 1,000 feet of an existing or proposed interchange or turning lane right-of-way and request a recommendation for proposed projects within their jurisdiction. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on

the application. The 45-day time limit in which to hold the public hearing may be extended by written agreement with the applicant. The 45-day time limit in which to hold the public hearing may also be extended by the committee when it has been determined by the committee that the public hearing notice requirements in section 2.2.6 [of the Land Use Code] for said hearing have not been met. In such instances, the committee shall reschedule the public hearing for a date that is within 30 days of the date of determination by the committee that the public hearing notice requirements in section 2.2.6 [of the Land Use Code] were not met or within the time limit as extended by the written agreement with the applicant.

- d. *Committee review and decision.* The committee shall hold a public hearing on the application and following the public hearing shall approve, approve with conditions or deny the conditional use permit application within 15 days after the public hearing based on the general approval criteria listed in 2.3.6.F of the [Land Use] Code subject to the limitations in this overlay district unless the time is extended by written agreement with the applicant. Failure of the committee to take final action within 90 days of the receipt of a complete application or within the time as extended by agreement with the applicant shall constitute an approval of the conditional use permit as proposed.
  1. Compliance with all other provisions of this chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access, and performance standards, shall be required of all conditional uses, subject to the limitations in this overlay district.
  2. The committee may disapprove an application if the applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under subsection (b)(1)f.
  3. The department shall notify the applicant, in writing, of the committee's final decision. If the decision is to disapprove the application, the department shall include with the written notification substantial evidence which supports the decision.
  4. A party who is aggrieved by the final decision of the committee under this subsection, may bring an action in circuit court of Dodge County in which the proposed activity, which is the subject of the application, is to be located.
- (4) *Factors considered in granting a conditional use permits.* The committee shall consider the following factors in determining whether to issue a permit, although the committee may waive or reduce the burden on the applicant of one or more of these criteria if the committee concludes that the intent of this chapter is better served thereby.
  - a. Height of the proposed tower;
  - b. Proximity of the tower to residential structures;
  - c. Design of the tower, with particular reference to design characteristics that have the effect of accommodating other users.
  - d. Proposed ingress and egress; and
  - e. Availability of suitable existing towers and other structures.
- (5) *Availability of suitable existing towers or other structures.* The committee may disapprove an application if the applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under subsection (b)(1)f. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:
  - a. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.
  - b. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

- c. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- e. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are economically burdensome.
- f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(c) *Application process for class 2 collocation.*

- (1) All land use applications for class 2 collocation projects shall be submitted to the land use administrator upon forms provided by the department. Applications for a class 2 collocation project shall include the following:
  - a. The name, and business address of, and the contact individual for, the applicant.
  - b. The location of the proposed or affected support structure.
  - c. The location of the proposed mobile service facility.
- (2) *Completed applications.* If an applicant submits an application to the department for a land use permit to engage in a class 2 collocation, which contains all of the information required under this subsection, the department shall consider the application complete. If the department does not believe that the application is complete, the department shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- (3) *Town responsibilities.* Within 45 days of receipt of a complete application, the land use administrator shall complete all of the following or the applicant may consider the application approved, except that the applicant and the department may agree in writing to an extension of the 45-day period.
  - a. Review the application to determine whether the proposed project complies with all applicable aspects of the chapter, subject to the limitations in this section. If the application is determined to be incomplete, the land use administrator shall notify the developer/applicant of the application deficiencies and no further action shall be taken on the application until the required information is submitted and the application is determined to be complete.
  - b. Make a final decision whether to approve or disapprove the application.
  - c. Notify the applicant, in writing, of its final decision.
  - d. If the application is approved, issue the applicant the relevant permit.
  - e. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
  - f. A party who is aggrieved by the final decision of the land use administrator under this subsection, may bring action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

(d) *Application process for the placement, construction or modification of a radio broadcast facility.*

- (1) A conditional use permit application for the placement, construction or modification of a radio broadcast facility shall be submitted to the land use administrator upon forms provided by the department. The application, review and decision procedures for the conditional use permit shall be in accord with section 2.3.6 of the Land Use Code.

## **Sec. 63-3 Development standards**

### *(a) General design requirements.*

- (1) Towers shall be painted with alternate bands of aviation orange and white paint in accordance with standards listed in Chapter 3, Marking Guidelines, of the FAA Federal Advisory Circular 70/7460-1, Obstruction, Marking and Lighting and subsequent revisions. The tower owner shall also be responsible for repainting when the color changes noticeably or its effectiveness is reduced by scaling, oxidation, chipping, or layers of contamination.
- (2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment.
- (3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- (4) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- (5) Towers and antennas shall not be used for displaying any advertising.
- (6) No tower shall exceed 500 feet in height.

### *(b) Federal requirements.* All towers shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas.

### *(c) Accommodations of other users (collocation).*

- (1) Any proposed communication tower and tower site shall be designed, structurally, electrically and in all respects, to accommodate co-location of both the applicant's antenna(s) and comparable antenna(s) for at least three additional users. Towers and tower sites shall be designed to allow for future rearrangement of antennas upon the tower, to accept antennas mounted at varying heights, and to accommodate supporting buildings and equipment.
- (2) The holder of a permit for a tower shall allow co-location for at least three additional users and shall not make access to the tower and tower site for the additional users economically unfeasible. If additional user(s) demonstrate (through an independent arbitrator or other pertinent means) that the holder of a tower permit has made access to such tower and tower site economically unfeasible, then the permit shall become null and void.

### *(d) Setbacks and separation.* The following setbacks and separation requirements shall apply to all towers and antennas for which a permit is required; provided, however, that the committee may reduce the standard setbacks and separation requirements if the intent of this section would be better served thereby.

- (1) Communication towers and projecting aerials shall be located a minimum distance equal to the height of the tower from any residential structure.
- (2) Communication towers, including, but not limited to, radio and television transmission and relay towers, aerials, and observation towers, are exempt from the zoning district height requirements, however, no tower or any projecting aerial attached to the tower shall exceed 500 feet in height.
- (3) Guy wires, and accessory facilities must satisfy all applicable setback requirements of Chapter 5 of the [Land Use] Code.
- (4) Communication towers and projecting aerials shall be located a minimum distance equal to one-third the structure height from the side and rear lot line.

- (5) Communication towers and projecting aerials shall be located in accordance with the minimum setback distances required in section 5.1.2.E [of the Land Use Code] for roads.
  - (6) Communication towers that are located within the jurisdictional boundaries of the Town of Beaver Dam Airport Zoning Ordinance shall not exceed the maximum airport height regulations.
  - (7) Setback exception: Application of setback fall zone. If an applicant provides the Department with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller fall zone area than the setback required in the [Land Use] Code, the smaller fall zone setback area shall be used as the setback requirement unless the department provides the applicant with substantial evidence that the engineering certification is flawed.
- (e) *Security fencing.* Tower sites shall be enclosed by security fencing and shall be equipped with an appropriate anti-climbing device sufficient to deter the general public from obtaining access to the site.
- (f) *Landscaping.* Tower facilities shall be landscaped with a buffer of plant material that effectively screens the base of the tower and the supporting facilities from direct view of the tower site from an adjacent property. The standard buffer shall consist of a landscaped strip at least 4 feet wide outside the perimeter of the security fencing. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether.
- (g) *Removal of abandoned antennas and towers.* Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned. In such circumstances, the following shall apply:
- (1) The owner of such antenna or tower or owner(s) of the property where the tower site is located shall remove said antenna and/or tower, including all supporting equipment and building(s), within 90 days of receipt of notice from the land use administrator notifying the owner of such abandonment. If removal to the satisfaction of the land use administrator does not occur within said 90 days, the land use administrator may remove and salvage said antenna or tower and all supporting equipment and building(s) at the property owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.
  - (2) The applicant for a permit under this section shall submit a copy of a signed agreement between the property owner and the owner of the tower, antenna(s), and supporting equipment and building(s), detailing requirements for abandonment and subsequent removal based on the provisions of subsection (g)(1). This agreement shall contain provisions binding said agreement on future property owner(s) and future owner(s) of a tower, antenna, and all supporting equipment and building(s).
- (h) *Limitations.* With regard to an activity described in this overlay district, the town may not do any of the following:
- (1) Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers.
  - (2) Enact an ordinance imposing a moratorium on the permitting, construction, or approval of any such activities.
  - (3) Enact an ordinance prohibiting the placement of a mobile service structure in particular locations within the town.
  - (4) Charge a mobile radio service provider any recurring fee for an activity described in subsections 63-2(b) or 63-2(c).
  - (5) Permit third party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.

- (6) Disapprove an application to conduct an activity described under subsection 63-2(b) based solely on aesthetic concerns.
- (7) Disapprove an application to conduct a class 2 collocation on aesthetic concerns.
- (8) Enact an ordinance related to radio frequency signal strength or the adequacy of mobile service quality.
- (9) Impose a surety requirement, unless the requirement is competitively neutral, nondiscriminatory, and commensurate with the historical record for surety requirements for other facilities and structures in the town which fall into disuse. There is a rebuttable presumption that a surety requirement of \$20,000.00 or less complies with this paragraph.
- (10) Prohibit the placement of emergency power systems.
- (11) Require the mobile service support structure be placed on property owned by the town.
- (12) Disapprove an application based solely on the height of the mobile service structure or on whether the structure requires lighting.
- (13) Condition approval of such activities on the agreement of the structure or mobile service facility to provide space on or near the structure for the use of or by the town at less than the market rate, or to provide the town with other services via the structure or facilities at less than the market rate.
- (14) Limit the duration of any permit that is granted under this overlay district.
- (15) Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.
- (16) Disapprove an application based on an assessment by the town of the suitability of other locations for conduction the activity.
- (17) Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.
- (18) Consider an activity a substantial modification if a greater height is necessary to avoid interference with an existing antenna.
- (19) Consider an activity a substantial modification if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.
- (20) Limit the height of a mobile service support structure to under 200 feet.
- (21) Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the town in connection with the town's exercise of its authority to approve the application.
- (22) Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the town to place at or collocate with the applicant's support structure any mobile service facilities provided or operated by, whether in whole or in part, a town or an entity in which a town has governance, competitive, economic, financial or other interest.

**Sec. 63-4 Effective date of the permit**

- (a) Conditional use permits and land use permits granted for mobile service support structures and facilities, class 1 collocation projects and class 2 collocation projects under section 4.2.9.A.1 [of the Land Use Code] and subsection 63-2(a)(2) of this overlay district shall not expire.
- (b) Conditional use permits granted for radio broadcast facilities under section 4.2.9.A.3 [of the Land Use Code] shall expire one year after its effective date or at such alternative time specified in the approval process unless construction has been diligently pursued, a certificate of zoning compliance has been issued, the use established or the conditional use permit is renewed for a period not to exceed one year. A conditional use permit shall also expire upon termination of the project or if the rights granted by the permit are discontinued for 180 consecutive days.