



11333 N. Cedarburg Road  
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[www.cityofmequonwi.gov](http://www.cityofmequonwi.gov)

Office of the City Administrator

**PUBLIC WELFARE COMMITTEE**  
**Tuesday, April 8, 2025**  
**6:00 PM**  
**Lower Conference Room**

**Agenda**

1) Call to Order, Roll Call

2) Approval of Meeting Minutes

3) Resolutions

**Action requested: review and recommend approval**

- a. **RESOLUTION 4200** A Resolution Suspending the Live Meeting Broadcasts Requirement within the City's Communications Policy from April 16 - September 30, 2025, in Connection with the Renovation of Christine Nuernberg Hall

4) Ordinances

**Action requested: review and recommend approval**

- a. **ORDINANCE 2025-1675** An Ordinance Amending Chapter 58 of the Mequon Municipal Code, Allowing Showroom Sales Facilities as a Conditional Use within the City's B-4 Zoning Districts
- b. **ORDINANCE 2025-1679** An Ordinance Amending Section 58-41(g) of the Mequon Municipal Code, Related to the Issuance of Decisions by the Board of Appeals
- c. **ORDINANCE 2025-1678** An Ordinance Amending Chapter 58 of the Mequon Municipal Code, in Connection with the Implementation of 2023 WIS. ACT 16 Related to the Process and Procedures for Certain Zoning-Related Applications

5) Discussion Items

**Action requested: discuss and take action as needed**

- a. Definition of a Structure Related to Board of Appeals Case

6) Work Calendar

7) Adjourn

*Dated: April 8, 2025*

*/s/ Dale Mayr, Chair*

Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting. Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the City Administrator's Office at 262-236-2941, Monday through Friday, 8:00 AM – 4:30 PM



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Office of the City Administrator

**PUBLIC WELFARE COMMITTEE**  
**Thursday, March 20, 2025**  
**12:00 PM**  
**North Conference Room**

**Minutes**

1) Call to Order, Roll Call

**Present:**

Chair Dale Mayr  
 Alderman Gregg Bach  
 Alderman Brian Parrish

Also Present: Assistant City Administrator Schoenemann and Executive Assistant Enea

2) Approval of Meeting Minutes

a. March 11 Minutes

**RESULT:** **Approved by Voice Acclamation [Unanimous]**

**MOVED BY:** Alderman Bach

**SECONDED BY:** Alderman Parrish

<b>AYES:</b>	Mayr, Bach, Parrish
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3) Discussion Items

The Committee reviewed the survey instrument page by page. On the cover letter and page 1 of the survey, the Committee made a few edits to the font, requested a hyperlink to be added, and altered some spacing. The Committee then discussed the two maps on page 3. Planner Redding joined the meeting and said she could create a single map that showed areas A, B, and C instead of having three separate maps. The Committee made some additional verbiage adjustments to Question 8 and added Question 8b involving funding mechanisms. On Question 10, the Committee agreed to keep the pool amenities questions and remove the second question set option related to funding that was previously used in the 2019 Survey.

The Committee then reviewed a draft press release, yard signs, postcard, and envelope options. Instead of a phone number on the yard sign, they agreed to put the website where the online survey would be located. The Committee agreed to purchase 50 yard signs and to use the City logo's blue and green colors on the postcard with a picture of City Hall.

4) Adjourn

Alderman Parrish moved to adjourn at 1:22 PM and Alderman Bach seconded.

Respectfully Submitted,

*Carrie Enea*  
*Executive Assistant*



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Office of Administration

**TO: Public Welfare Committee**  
**FROM: Justin Schoenemann, Assistant City Administrator**  
**DATE: April 8, 2025**  
**SUBJECT: RESOLUTION 4200 A Resolution Suspending the Live Meeting Broadcasts Requirement within the City's Communications Policy from April 16 - September 30, 2025, in Connection with the Renovation of Christine Nuernberg Hall**

### **Background**

The City of Mequon has a longstanding practice of recording and broadcasting meetings of the Common Council, Committee of the Whole, Planning Commission, Municipal Water Utility Commission, Sewer Utility District Commission, and Appropriations Committee. These broadcasts are delivered live and replayed via Channel 25 for Spectrum subscribers, as well as on the City's website and YouTube channel. This practice was formalized in 2018 with the adoption of the City's Communications Policy, which outlines the standards and procedures for meeting broadcasts. A copy of the Meeting Broadcasting section of the Communications Policy is attached, while the full policy can be accessed here: <https://bit.ly/MequonComPolicy>.

### **Analysis**

In the first quarter of 2025, the Council approved extensive renovations to Christine Nuernberg Hall (Common Council Chambers), which will require its closure through at least September. These renovations will modernize the space, including updates to audio and video equipment to improve public meeting functionality and accessibility. As a result of this temporary closure, meetings typically held in Nuernberg Hall will be relocated to alternative sites, including the American Legion Post, the Frank L. Weyenberg Library, and City Hall's Lower Level Conference Room.

While these alternative venues provide adequate space for meetings, all lack the necessary technology to support live broadcasting. Additionally, the City's existing broadcasting equipment is not portable, and frequent disassembly and reassembly would not be feasible given the age of the system. Consequently, staff recommends temporarily suspending live broadcasting of public meetings during the renovation period, which is expected to run from mid-April through late-September.

Alternatively, to maintain public access to government proceedings, IT staff will continue to record all meetings and post the recordings on Channel 25, the City's website, and YouTube as soon as possible, ideally by the next business day. This temporary adjustment will provide continued transparency of meetings and access to information for the public while Nuernberg Hall undergoes necessary upgrades.

**Recommendation**

A recommendation is forthcoming from the Public Welfare Committee on April 8, 2025.

COMMON COUNCIL  
OF THE  
CITY OF MEQUON

RESOLUTION 4200

A Resolution Suspending the Live Meeting Broadcasts Requirement within the City's Communications Policy from April 16 - September 30, 2025, in Connection with the Renovation of Christine Nuernberg Hall

**RECITALS**

A. The City of Mequon by practice and in accordance with its Communication Policy, records and live broadcasts meetings of the Common Council, Committee of the Whole, Planning Commission, Municipal Water Utility Commission, Sewer Utility District Commission, and Appropriations Committee.

B. Due to extensive renovations to Christine Nuernberg Hall, the meeting room will be closed for the duration of the project, which is scheduled to begin on April 16 and is anticipated to be completed by September 30, 2025.

C. The alternative meeting locations lack the necessary technology to support live broadcasting, and the City's existing broadcasting equipment is not portable or feasibly relocated.

BASED UPON THE FOREGOING RECITALS, IT IS RESOLVED by the Common Council of the City of Mequon, Wisconsin, that:

1. The City of Mequon hereby temporarily suspends live broadcasting of public meetings until the completion of the Christine Nuernberg Hall renovation project.
2. During this period, meetings will continue to be recorded and made available on the City's designated platforms as soon as practicable.
3. The Mayor and City Clerk are authorized and directed to execute and deliver any necessary documents to implement this resolution.

\_\_\_\_\_  
Approved by: Andrew Nerbun, Mayor

Date Approved: April 8, 2025

I certify that the foregoing Resolution was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on April 8, 2025.

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Caroline Fochs, City Clerk



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Office of Community Development

**TO: Public Welfare Committee**  
**FROM: Kim Tollefson, Director of Community Development**  
**DATE: March 11, 2025**  
**SUBJECT: ORDINANCE 2025-1675 An Ordinance Amending Chapter 58 of the Mequon Municipal Code, Allowing Showroom Sales Facilities as a Conditional Use within the City's B-4 Zoning Districts**

### **Background**

At the February 24, 2025, Planning Commission meeting, the commissioners approved a text amendment to allow for a new Conditional Use within the City's B-4 Zoning District. The amendment will allow for a showroom sales facility, which will house a collection of designer showrooms displaying building products, furnishings, hardware, etc. for selection and purchase. Currently, the conditional use section of the B-4 code allows for the uses identified in Exhibit A as attached.

### **Analysis**

The design center/showroom aligns to other uses currently allowed as conditional uses within the B-4 District, such as photography and dance studios, where there is an element of the business that brings customers to the site. The approved text amendment will add the following language to the conditional use section of the B-4 Zoning Code:

*A showroom sales facility where items on display are purchased by order or in bulk and not through onsite inventory. This includes, but is not limited to, building products, interior fixtures, and furnishings. The sales facility is primarily open to contractors and industry professionals but is also open to the general public. No outdoor storage is permitted.*

### **Fiscal Impact**

The fiscal impact is neutral.

### **Recommendation**

On February 24, 2025, the Planning Commission approved a recommendation in favor of approving the proposed ordinance amendment by a vote of 5-0. A further recommendation is forthcoming from the Public Welfare Committee on April 8, 2025.

Attachments:

Exhibit A: B-4 Business Park District (DOCX)

COMMON COUNCIL  
OF THE  
CITY OF MEQUON

ORDINANCE 2025-1675

An Ordinance Amending Chapter 58 of the Mequon Municipal Code, Allowing Showroom Sales Facilities as a Conditional Use within the City's B-4 Zoning Districts

**RECITALS**

A. Pursuant to the authority granted to it under Section 62.23(7) of the Wisconsin Statutes, the City of Mequon previously adopted a comprehensive Zoning Code for the City which includes the B-4 Zoning District under Section 58-297 of the Municipal Code.

B. On February 24, 2025, the Planning Commission, by a majority vote, adopted a recommendation to approve a text amendment allowing for a conditional use to be added to the B-4 Zoning District.

C. Following due notice and a public hearing by the Common Council, the Council finds that the proposed amendment is consistent with the City's comprehensive master plan and that the amendment would further the health, safety and welfare of the community.

BASED UPON THE FOREGOING RECITALS, the Common Council of the City of Mequon, Wisconsin, do ordain as follows:

**SECTION I**

Section 58-297(e)(26) is created to read as follows:

(26) A showroom sales facility where items on display are purchased by order or in bulk and not through onsite inventory. This includes, but is not limited to, building products, interior fixtures, and furnishings. The sales facility is primarily open to contractors and industry professionals but is also open to the general public. No outdoor storage is permitted.

**SECTION II**

The terms and provision of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

**SECTION III**

All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

**SECTION IV**

This ordinance shall be in full force and effect upon its passage and on the day after its publication.

\_\_\_\_\_  
Approved by: Andrew Nerbun, Mayor

Date Approved: April 8, 2025

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on April 8, 2025.

\_\_\_\_\_  
Caroline Fochs, City Clerk

Published: \_\_\_\_\_

## EXHIBIT A

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### Sec. 58-297. B-4 business park district.

- (e) *Conditional uses.* Conditional uses shall include, but not necessary be limited to, the following:
- (1) Light manufacturing.
  - (2) Processing.
  - (3) Wholesaling.
  - (4) Distribution.
  - (5) Research and development.
  - (6) Printing and publication.
  - (7) Warehousing.
  - (8) Barbershops and beauty salons.
  - (9) Bookstores.
  - (10) Commercial child day care facilities.
  - (11) Restaurants (not including fast food facilities).
  - (12) Florists (not including greenhouses).
  - (13) Gift shops.
  - (14) Pharmacies.
  - (15) Studios for photography, painting, music, sculpture, dance or other recognized fine art.
  - (16) Automobile service facilities.
  - (17) Satellite dishes.
  - (18) Public and/or private utilities, telecommunication installations, transmission and distribution lines, poles, and other accessories. Specific regulations related to wireless telecommunication installations shall be subject to this chapter. When a utility proposes a main inter-city transmission facility, the utility shall give notice to the city of such intention and of the date of hearing before the public service commission. Public and/or private utility installations less than three feet in height shall be subject only to City of Mequon staff approval and may be allowed subject to staff-imposed conditions regarding, among other things, effective screening from public view with all season vegetation.
  - (19) Theatres.
  - (20) Structures greater than 40,000 square feet in size and/or greater than two stories in height.
  - (21) Development that includes a proposed modification to one or more standard district regulation applicable to the base zoning district and located on a vacant parcel which is non-conforming to the required base zoning district standards for minimum lot size or minimum lot width.
  - (22) Pet day-cares and kennels pursuant to the specific requirements set forth in division 11.
  - (23) Fitness centers.
  - (24) Development that includes a proposed modification to one or more standard district regulation applicable to the base zoning district and located on an improved parcel with an existing structure in which parcel, or improvement, or both, are non-conforming to any of the required base zoning district standards.

## EXHIBIT A

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- (25) Convention or conference center.
- (26) A showroom sales facility where items on display are purchased by order or in bulk and not through onsite inventory. This includes, but is not limited to, building products, interior fixtures, and furnishings. The sales facility is primarily open to contractors and industry professionals but is also open to the general public. No outdoor storage is permitted.**



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Office of City Attorney

**TO: Public Welfare Committee**  
**FROM: Brian Sajdak, City Attorney**  
**DATE: April 8, 2025**  
**SUBJECT: ORDINANCE 2025-1679 An Ordinance Amending Section 58-41(g) of the Mequon Municipal Code, Related to the Issuance of Decisions by the Board of Appeals**

### **Background**

The proposed ordinance makes changes to Municipal Code relating to the finalization of decisions of the Board of Appeals. By way of background, the Code presently provides that the Board's written decision be completed within 10 days of the hearing, which is the circulated for 5 days and finalized. In other words, the decision is issued 15 days after the hearing.

There are a couple of challenges to this approach. First, based upon the current meeting schedule wherein the Board meets on the first Thursday of the month, other business required at that time of the month often creates additional demands on the City Attorney's Office. Within the City of Mequon, I am responsible for reviewing all resolutions and ordinances that are placed on the agenda for Common Council meetings, which occur on the second Tuesday of the month. That agenda usually goes out on the Thursday before the meeting. As such, much of the time between a hearing before the Board of Appeals and the Common Council meeting is spent reviewing items for Council consideration. In addition, each of the other municipal entities the City Attorney's firm represents likewise have meetings of their governing bodies during this same time period. In short, the first part of the month is an extremely busy time, which requires balancing of competing needs.

The second challenge to the current language is that it ignores the potential complexity of a case. In a complex case, there may be additional legal research necessary to add legal standards to a proposed decision. Similarly, some cases might require obtaining a transcript to appropriately complete the decision. The Walanta decision (related to a variance for a staircase on the Lake Michigan bluff) earlier this year is an example of this. In these circumstances, obtaining a transcript and completing the decision within 10 days is extremely difficult, if not impracticable.

Based upon these issues, the proposed change provides additional days to complete the decision. It also provides for a process to deviate from the typical process where appropriate. These changes are shown in the proposed ordinance in the packet. All told, the proposed change adds five days to the process.

There may be some members who are concerned about extending the time to complete a

decision. However, the proposed amendment does not run afoul of any legal requirement or standard. Under the controlling statute, Wis. Stat. § 62.23(7)(e)6, the only requirement is that the Board decide the appeal “within a reasonable time.” A survey of other Wisconsin municipalities reveals that most communities fall one of two categories: those that either expressly or impliedly adopt the statutory language of “within a reasonable time” and those that utilize 30 days. Out of 30 other municipalities surveyed, 12 use reasonable time, 13 use 30 days, 2 use 15 days, and 3 use 60 days. These are listed in the attached chart. The proposed amendment keeps the City’s typical process below the 30 days used by many. At the same time, it provides flexibility where it is needed.

Following consideration by the Board of Appeals, the proposed ordinance was amended beyond the original proposal in a couple ways. First, it clarified the language to make it clear that the intent is that the decision should be finalized within 15 days, but that it may extend to 60 days (there was initial some concern that the ordinance would allow for up to 80 days). The second change is the elimination of “the chair” from the discussion related to finalizing the decision. The Board of Appeals believed that the chair should not be drafting the decision.

Finally, the Board had concerns related to the appropriate individuals to approve extensions beyond the typical 15 days. Originally, the ordinance had the initial extension being granted by the chair of the Board of Appeals, and the more than 60 days extension to be made by the full Board. The Board was concerned that they do not have sufficient knowledge as to overall workload of the City Attorney to be in a position to appropriately judge whether an extension is warranted. As such, they recommended the current version where the Mayor grants the initial extension, and the subsequent extension is by the full Council.

### **Recommendation**

On January 2, 2025, the Board of Appeals approved a recommendation in favor of adopting the proposed ordinance amendment by a vote of 4-0, with one member abstaining. Thereafter, on February 24, 2025, the Planning Commission also approved a recommendation in favor of adopting the proposed ordinance amendment by a vote of 5-0.

#### Attachments:

Chart of Other Community Standards (PDF)

COMMON COUNCIL  
OF THE  
CITY OF MEQUON

ORDINANCE 2025-1679

An Ordinance Amending Section 58-41(g) of the Mequon Municipal Code, Related to the Issuance of Decisions by the Board of Appeals

**RECITALS**

A. Under Wis. Stat. § 62.23(7)(e) the City is authorized to establish various rules and procedures related to the operation of the Board of Appeals, provided ultimately that any decision issued by the Board is issued within a reasonable time.

B. The Common Council previously adopted section 58-41(g) of the Mequon Municipal Code which provides for a timeline for the Board of Appeals to issue decisions on matters it hears.

C. Based upon various considerations raised by the City Attorney, the Common Council desires to amend this timeline to provide additional flexibility while still meeting the statutory requirement of reasonableness.

D. The Board of Appeals recommended approval of these changes at its meeting on January 2, 2025.

E. The Planning Commission recommended approval of these changes at its meeting on February 24, 2025.

F. The Public Welfare Committee recommended approval of these changes at its meeting on April 8, 2025.

F. A Public Hearing on the proposed changes was held on May 13, 2025.

G. Based upon the information provided by the City Attorney, the recommendations of the Board of Appeals, Planning Commission and the Public Welfare Committee, and the testimony provided at the Public Hearing, the Common Council finds that the proposed changes are appropriate and in the best interests of the health, safety and welfare of the community.

BASED UPON THE FOREGOING RECITALS, the Common Council of the City of Mequon, Wisconsin, do ordain as follows:

**SECTION I**

Section 58-41(g) of the Mequon Municipal Code is amended to read as follows (NOTE: Deleted text is ~~struck through~~; Added text is **bolded & underlined**):

58-41(g) *Decision.* **The board shall issue its decision within a reasonable time upon the final conclusion of the hearing. In general, the** ~~The attorney representing the board or the chair **should** shall render a written decision within ~~ten~~**fifteen** days after completion of the hearing. **The time for rendering the decision may be extended with the concurrence of the mayor based upon the complexity of the matter, the need to obtain and utilize a transcript of the hearing, workload or time conflicts, or similar considerations except that any delay in rendering the decision beyond 60 days after the date of the hearing shall require approval of the common council. Upon rendering the decision,** ~~the~~The city clerk shall promptly circulate the decision to all members of the board who were present for the hearing for their review. The decision shall be deemed final unless, prior to the close of business on the fifth day following such circulation, a member who voted in the majority files a written objection with the city clerk. Upon receipt of an objection, the city clerk shall schedule another meeting of the board for the purposes of considering the objection and finalizing the decision. Within two business days following such additional meeting, the board shall file the final decision with the city clerk.~~

**SECTION II**

The terms and provision of this ordinance are severable. Should any term of provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

**SECTION III**

All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

**SECTION IV**

This ordinance shall be in full force and effect upon its passage and on the day after its publication.

\_\_\_\_\_  
Approved by: Andrew Nerbun, Mayor

Date Approved: April 8, 2025

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on April 8, 2025.

\_\_\_\_\_  
Caroline Fochs, City Clerk

Published: \_\_\_\_\_

### Chart of Comparable Communities

<b>15 Days:</b>	Lannon	New Berlin		
<b>30 Days:</b>	Germantown	Franklin	Greenfield	Cedarburg
	Elkhorn	Glendale	Hartland	Pewaukee
	Sun Prairie	Thiensville	Verona	Wauwaukee
	Oconomowoc <sup>1</sup>			
<b>60 Days:</b>	Grafton	Oshkosh	Wausau	
<b>“Reasonable Time”</b>	Madison	Delafield	Middleton	Middleton
	Waukeshu			
<b>“Per Statute”</b>	Brown Deer	Fitchburg		
<b>None:<sup>2</sup></b>	Beloit	Green Bay	Menomonee Falls	Random Lake
	West Allis	Wauwatosa		

<sup>1</sup> Authorizes additional time if approved by Board and Applicant

<sup>2</sup> With none, the statutory timeline ultimately applies



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Office of City Attorney

**TO: Public Welfare Committee**  
**FROM: Brian Sajdak, City Attorney**  
**DATE: April 8, 2025**  
**SUBJECT: ORDINANCE 2025-1678 An Ordinance Amending Chapter 58 of the Mequon Municipal Code, in Connection with the Implementation of 2023 WIS. ACT 16 Related to the Process and Procedures for Certain Zoning-Related Applications**

### **Background**

The proposed ordinance makes a number of changes to the City's Zoning Code to reflect changes in the statutes based upon recent legislation.

The most significant change is that the statute now prohibits protest petitions, and reflects the continuation of recent legislation which removes local control over many matters, including zoning decisions. The current outright prohibition follows the Legislature's removal of protest petition language from the statute in 2017. The provision related to protest petitions was added to the legislation by a lobbyist for the Realtors Association, and it is speculated that this was done because very few communities removed their protest petition language when the law was changed in 2017. Because of this change, the proposed ordinance removes the three locations where the Municipal Code allows for protest petitions. These changes are reflected in Sections I, III, and V.

Similarly, the statute also provides that any rezoning must be approved by a simple majority of the members present and voting. This is inconsistent with Section 2-43(4) of the Code which requires five affirmative votes for council action, except where otherwise provided for in the Code. Accordingly, the proposed ordinance adds a paragraph that matches the statute's lower vote requirement in Section I (which replaces existing protest petition language).

Finally, the remaining changes address statutory changes related to judicial review of zoning decisions. Specifically, the statute provides for broader use of certiorari review together with an "expedited" version of certiorari review for certain residential zoning applications. The proposed ordinance incorporates these changes as well in Sections II and IV.

### **Analysis**

Most of the changes are fairly simple and easy to understand, with one exception. The elimination of the protest petition provision caused significant discussion before the Planning Commission. Accordingly, a more detailed analysis of this change (and a discussion of some of the issues raised by the Planning Commission) is appropriate.

1. What is the history of protest petitions?

For a large part of Wisconsin history, provisions within the statutes related to zoning provided for what has commonly come to be known as protest petitions for changes to the zoning of property. In short, the statute provided that where a verified petition meeting certain qualifications was filed with the municipality, any change in zoning to a property would require a supermajority vote of three-fourths of the members of the governing body to pass instead of the typical simple majority vote. The most recent version of this language was found in Wis. Stat. § 62.23(7)(2m)(a). Many communities, including Mequon, adopted this language in their local codes.

In 2018, the legislature enacted changes to this long-standing provision in 2017 Wisconsin Act 243. Act 243 was often called the “Developers Bill” because it made numerous changes sought by the Wisconsin REALTORS and Wisconsin builders’ associations to limit and regulate municipal powers related to development. In the case of protest petitions, Act 243 was fairly simple - it repealed Section 62.23(7)(2m)(a). In the aftermath of this change, there was much debate about whether this repeal eliminated protest petitions completely - including removing statutory authority for local municipalities to retain their local code provisions - or if it only removed the requirement in the statute while leaving local communities with the power to require it locally. Based upon the opinion of this office at the time, the Common Council chose to keep the protest petition language within the Zoning Code, although it did change the terms and standards within that language to the version that is currently in the Code.

Anecdotally, my understanding is that most municipalities followed Mequon’s approach and elected to retain some form of protest petition in their local codes when they were presented with the choice to remove their local protest petitions following Act 243. I suspect that this choice led the lobbyists for the developers’ groups to seek additional changes. These changes were ultimately enacted by the legislature in 2023 as 2023 Wisconsin Act 16. Act 16 included numerous changes designed to make residential development easier. It also includes a provision that creates Wis. Stat. § 66.10015(3)(a), which reads in relevant part that “the enactment of a zoning amendment shall be approved by a simple majority of a quorum of the members-elect.” In short, this change requires that all zoning amendments be approved by a simple majority vote of the governing body and, therefore, eliminates any authority for local municipalities to require a supermajority vote for zoning changes through protest petitions or otherwise.

2. I thought the First Amendment guaranteed the right to petition the Government?

There are concerns that this ordinance impacts the First Amendment right “to petition the Government for a redress of grievances.” In short, the concern is that by eliminating protest petitions, the code eliminates the ability to petition altogether. Nothing can be further from the truth. First, recall that the term “protest petition” is not actually found in the statute or code. The term is merely nomenclature that has been adopted as shorthand for the process of protesting a zoning change. Second, this change does not eliminate anyone’s right to file a petition with the City. The sole impact to the amendment is that there will be no supermajority votes required for zoning changes. Finally, the change does not in any way eliminate any of the rights to appear at

and speak at the public hearing required for a zoning change or eliminate the right to otherwise send comments to Council members on a proposal or speak at the Council meeting.

3. Does the City have to act to remove the language?

Certainly not. But by not acting there are impacts. Act 16 became effective on January 1, 2025, and after that effective date there is legally no impact to not acting. Whether the City adopts the ordinance or not, the statute requires that zoning amendments be adopted by a simple majority. Any attempt to deny a zoning change because it did not receive a three-fourths vote after the filing of a protest under a local ordinance would be summarily dismissed in short order by any reviewing court because that ordinance conflicts with state law. In other words, even if the Code is not changed, legally it cannot be applied. Furthermore, even if the Council has no intent to follow the language of the current Code by imposing the higher vote requirement after receiving a protest petition, leaving an unenforceable provision in the Code sets unrealistic expectations for the public that may result in criticism, distrust and a lack of faith in the process. Protest petitions usually required significant work and effort by residents to meet the standards. Leaving the language in could result in a resident reviewing the Code and expending significant effort to file a protest petition only to be told that their work was for a naught because “our hands are tied” by the statute. It sets unrealistic expectations that will result in distrust and a lack of faith in the process.

4. Can the City adopt regulations that are more restrictive than the statute?

Yes, in some circumstances. More importantly, “more restrictive” would not mean a more restrictive vote. The Wisconsin Constitution grants cities and villages in Wisconsin broad “Home Rule” authority to regulate their local affairs and government. Wis. Const. art. XI, § 3. This authority is “subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village.” *Id.* In addition to the Constitutional Home Rule authority, the legislature has delegated and granted villages broad management and police power authority, “limited only by express language.” Wis. Stat. § 61.34(1). However, a legislative grant of authority under the statutes is limited such that “ordinances may not ‘infringe the spirit of a state law or . . . general policy of the state.’ ” Wisconsin's Env't Decade, Inc. v. Dep't of Nat. Res., 85 Wis. 2d 518, 534-35, 271 N.W.2d 69, 76 (1978) (quoting Fox v. Racine, 225 Wis. 542, 545, 275 N.W. 513, 514 (1937)). The Supreme Court has held:

If a municipality acts within the legislative grant of power but not within the constitutional initiative, the state may withdraw the power to act; so if there is logically conflicting legislation, or an express withdrawal of power, the local ordinance falls. Furthermore, if the state legislation does not logically conflict, or does not expressly withdraw power, it is possible that the local ordinance nevertheless must fall if an intent that such an ordinance not be made can be inferred from the fact that it defeats the purpose or goes against the spirit of the state legislation.

Id. (quoting Solheim, Conflicts Between State Statute and Local Ordinance in Wisconsin, 1975

Wis. L. Rev. 840, 848).

Within this framework, the initial question is under what authority the ordinance is adopted. Here, there is no question that the authority is granted expressly by statute in Wis. Stat. § 62.23(7)(am):

*Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the council may regulate and restrict by ordinance, subject to par. (hm), the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, subject to s. 66.10015 (3) the density of population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes if there is no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation enacted or adopted under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. This subsection may not be deemed a limitation of any power granted elsewhere.

Further, the courts have held that zoning is a matter of statewide concern. See State ex rel. Ziervogel v. Washington Cnty. Bd. of Adjustment, 2004 WI 23, ¶¶ 37-40, 269 Wis. 2d 549, 571-73, 676 N.W.2d 401, 411-12. “A municipality may regulate matters of statewide concern so long as ‘such ordinances do not conflict with ... the state legislation.’ ” Scenic Pit LLC v. Vill. of Richfield, 2017 WI App 49, ¶ 8, 377 Wis. 2d 280, 287, 900 N.W.2d 84, 87 (quoting DeRosso Landfill Co., Inc. v. Oak Creek, 200 Wis. 2d 642, 651, 547 N.W.2d 770). “An ordinance is preempted when any of the following four tests are satisfied: (1) the legislature has expressly withdrawn the power of the municipality to act, (2) the ordinance logically conflicts with state legislation, (3) the ordinance defeats the purpose of state legislation, or (4) the ordinance violates the spirit of state legislation.” Id. In short, a “municipality may enact ordinances in the same field on the same subject covered by state legislation where such ordinances do not conflict with, but rather complement the state legislation.” Johnston v. Sheboygan, 30 Wis. 2d 179 (1966). A key question in this regard is whether the local ordinance moves “in the same direction . . . farther but not counter to” the statute. Wisconsin's Env't Decade, 85 Wis. 2d at 535.

Applying this standard here, it is clear that the intent of the legislation was to make it easier to adopt zoning changes. The [drafting files on Act 16 include an email <https://docs.legis.wisconsin.gov/2023/related/drafting\\_files/wisconsin\\_acts/2023\\_act\\_016\\_ab\\_266/01\\_ab\\_266/23\\_0585df.pdf>](https://docs.legis.wisconsin.gov/2023/related/drafting_files/wisconsin_acts/2023_act_016_ab_266/01_ab_266/23_0585df.pdf) to the legislative drafting bureau from Representative Brooks’ office requesting that the bill include a provision “to prohibit supermajority votes for zoning changes.” Accordingly, retaining an ordinance that maintains a supermajority vote for zoning changes is preempted because it conflicts with the legislative directive. If the Board desired to go beyond what the statute requires, the only option would be to further reduce the vote requirement - although I am aware of no law (local or otherwise) which would allow for the passage of something by a clearly undemocratic non-majority vote.

5. The email from the REALTORS Association in the drafting files was more explicit in prohibiting protest petitions. Given that the adopted language is different, does that not mean

protest petitions are not prohibited?

The REALTORS Association's email provided:

Here is the draft language to prohibit supermajority votes for zoning changes. Let me know what you think. "Except as provided under Wis. Stat. s. 66.10015, a political subdivision is prohibited from requiring more than a simple majority vote of a quorum of the members-elect for any zoning amendment."

The final language in the Act reads:

Except as provided in par. (b) and ss. 59.69 (5) (e) 5m., 60.61 (4) (c) 3., and 62.23 (7) (d) 2m., the enactment of a zoning amendment shall be approved by a simple majority of a quorum of the members-elect.

The reasons for this slight difference are likely two-fold. First, the Legislative Reference Bureau (the non-partisan agency that drafts all legislation for the legislature) included the language within § 66.10015, so the REALTORS language needed to be changed to remove the reference to § 66.10015. Second, the Legislative Reference Bureau would be aware of prior caselaw on various issues, the Supreme Court provided guidance on this exact issue in Vaicelunas v. Fechner, 7 Wis. 2d 14, 95 N.W.2d 786 (1959). In that case, the Supreme Court was faced with an apparent conflict between the statute which provided for passage of an ordinance by a majority vote of the council and a City of Kenosha zoning ordinance that required a three-fourths majority vote by the council to adopt a zoning change where the plan commission had disapproved of the change. "The trial court stated that the word 'majority' means the greater number or more than half but that word as used in sec. 64.07(3), Stats., did not define the limitations of the majority. Therefore the zoning ordinance did not conflict with the statute." Id. at 16. The Court continued to note "the use of the word 'majority' in the statute is not contradicted by the use of the words 'three-fourths majority' in the ordinance, and that the two may stand side by side without any inconsistency." Id.

Unlike the statute in the Vaicelunas case, the statute here uses the words "simple majority" instead of "majority." The courts have routinely recognized that there is a difference between a simple majority and a three-fourths majority. See, e.g., Merkel v. Germantown, 218 Wis. 2d 572, 576, 581 N.W.2d 552, 554 (Ct. App. 1998)(analysis of a simple majority vote in the context of a protest petition). Therefore, the holding in Vaicelunas that "three-fourths majority" is not in conflict with "majority" does not apply here as there is a clear conflict between "simple majority" and "three-fourths majority." The Legislative Reference Bureau likely drafted the final language in recognition of this caselaw.

6. The City can/should just enforce the higher vote as a form of protest to the statute and the legislature's overreach.

While this is clearly an example of the legislature interfering with local control over local matters such as appropriate land use and the operations of local governing bodies, this office cannot recommend this form of protest. The most obvious reason why is that the legislature will

never know that the protest is occurring. More importantly, as noted in section 3 above, there could be impacts to not acting such that this approach is not recommended because it represents a poor use of taxpayer dollars and also represents an increasing risk of liability for damages in a civil rights lawsuit.

Under the law, a denial of a zoning amendment would be subject to judicial review under the certiorari standard. Under this standard, the reviewing court will determine:

(1) Whether the Board “kept within its jurisdiction”; (2) whether the Board “acted according to law”; (3) whether the Board's action “was arbitrary, oppressive, or unreasonable and represented its will and not its judgement”; and (4) whether the evidence was such that the Board “might reasonably make the order or determination in question.”

Marris v. City of Cedarburg, 176 Wis. 2d 14, 24, 498 N.W.2d 842, 846-47 (1993). “The phrase ‘acted according to law’ has been interpreted as including ‘the common-law concepts of due process and fair play.’ ” Id. As discussed above, if the City were to apply the higher vote requirement to an application, that action is not in accordance with the law. Thus, the reviewing court would quickly resolve any challenged filed, overrule the City and order the adoption of the zoning change. If there was a good-faith basis to argue that the statute should not apply, there may be a benefit to paying legal fees to make the case. Paying legal fees simply because the City does not like the statute and wants to protest is not, in this office’s opinion, a good use of taxpayer dollars.

Another risk is that by denying a zoning application the applicant could make a constitutional takings claim. Article I, § 13 of the Wisconsin Constitution provides, “The property of no person shall be taken for public use without just compensation therefor.” There does not need to be a physical invasion or acquisition of land in order for there to be a taking. Such takings are called “regulatory takings,” see Hoepker v. City of Madison Plan Comm'n, 209 Wis. 2d 633, 651, 563 N.W.2d 145 (1997), and occur when government regulation or action denies a land “all or substantially all practical uses of a property” such that just compensation is required. Eberle v. Dane Cnty. Bd. of Adjustment, 227 Wis. 2d 609, 622, 595 N.W.2d 730, 737 (1999). The government may owe compensation even where the taking is temporary in duration and the owner has “regained full use of the property due to the government's rescission of the restriction.” Zinn v. State, 112 Wis. 2d 417, 429, 334 N.W.2d 67, 73 (1983). In the right circumstances, a property owner may be able to argue that an improper denial of a zoning application using a three-fourths majority standard resulted in a regulatory taking requiring the payment of just compensation.

A related, but more realistic and larger risk is a particularly disgruntled applicant filing a claim for civil rights violations under 42 U.S.C. § 1983.

Section 1983 provides a federal cause of action for violations of federal rights. However, a violation of federal rights does not occur automatically whenever a municipality violates a federal statute. Rather, three factors must be present. First, the federal statute at issue must have been intended by Congress to benefit the

plaintiff; second, the right created must not be so amorphous that its enforcement would “strain judicial competence”; and third, the obligation must be imposed in a binding and unambiguous manner so that compliance is mandatory.

Primeco Pers. Commc'ns v. City of Mequon, 242 F. Supp. 2d 567, 580 (E.D. Wis.), *aff'd sub nom. PrimeCo Pers. Commc'ns, Ltd. P'ship v. City of Mequon*, 352 F.3d 1147 (7th Cir. 2003)(internal citation omitted)(holding that the Telecommunications Act of 1996 foreclosed recovery under § 1983 for improper zoning denial); *but see Harding v. County of Door*, 870 F.2d 430, 431 (7th Cir.1989) (zoning decision revoking a building permit denies substantive due process if it is invidious or irrational; held, the decision was not irrational). Depending on the circumstances and the nature of the claim, a successful claim under § 1983 can result in the recovery of actual (compensatory) damages, punitive damages where the conduct was “motivated by evil motive or intent” or involved “reckless or callous indifference to the federally protected rights of others,” Smith v. Wade, 461 U.S. 30, 56 (1983), and of the party’s actual attorney’s fees. These damages can add up quickly. If the applicant is able to establish that a denial of an application illegally infringed on a protected right (including property rights), ignoring a statute to apply a three-fourths majority requirement could be significant evidence that the infringement was made with reckless or callous indifference.

### **Recommendation**

On February 24, 2025, the Planning Commission approved a recommendation in favor of adopting the proposed ordinance amendments by a vote of 5-0. A further recommendation is forthcoming from the Public Welfare Committee on April 8, 2025.

COMMON COUNCIL  
OF THE  
CITY OF MEQUON

ORDINANCE 2025-1678

An Ordinance Amending Chapter 58 of the Mequon Municipal Code, in Connection with the Implementation of 2023 WIS. ACT 16 Related to the Process and Procedures for Certain Zoning-Related Applications

**RECITALS**

A. The Common Council previously adopted Chapter 58 of the Mequon Municipal Code pursuant to the authority granted in Wis. Stat. § 62.23 to broadly regulate the zoning of property within the City.

B. The Wisconsin legislature enacted 2023 Wis. Act 16 which largely became effective on January 1, 2025.

C. 2023 Wis. Act 16 places certain restrictions on the City's zoning authority.

D. The Common Council desires to adopt these restrictions so as to avoid inconsistencies between the statutes and the municipal code.

E. The regulation of properties in the City through zoning promotes the health, safety and welfare of the community.

BASED UPON THE FOREGOING RECITALS, the Common Council of the City of Mequon, Wisconsin, do ordain as follows:

**SECTION I**

Section 58-42(k) of the Mequon Municipal Code is repealed and recreated to read as follows:

- (k) *Vote Required.* Except as provided below, and except as provided in Wis. Stat. § 62.23(7)(d)2m, the enactment of the proposed change or amendment shall be approved by a simple majority of the members present and voting. In the event that the proposed change or amendment constitutes a down zoning ordinance as defined in Wis. Stat. § 66.10015(1)(as), enactment shall require approval by at least two-thirds of the members-elect, except that if the change or amendment is requested, or agreed to, by the owner of the land affected by the proposed change or amendment, such change or amendment may be enacted by approval of a simple majority of the members present and voting.

## SECTION II

Section 58-45 of the Mequon Municipal Code is created to read as follows:

Sec. 58-45. - Certiorari review.

(a) Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the city, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari as provided by Wis. Stat. § 62.23(7)(e)10.a.

(b) If the planning commission or common council deny a person's application for a conditional use permit, such person may appeal such denial to circuit court by commencing an action seeking the remedy available by certiorari as provided by Wis. Stat. § 62.23(7)(e)10.a.

(c) Notwithstanding the above, a decision of the common council, planning commission, or board of appeals, on an application for an approval, as defined in Wis. Stat. § 781.10(1)(a), is subject to review under the procedures contained in Wis. Stat. § 781.10.

## SECTION III

Section 58-64 of the Mequon Municipal Code is amended to read as follows (NOTE: Deleted text is ~~struck through~~; Added text is **bolded and underlined**):

Sec. 58-64. - Exempted uses.

The enlargement, expansion, or intensification of a nonconforming use may be allowed by the planning commission following a public hearing duly noticed and held by the planning commission, provided that the planning commission shall review, determine and set forth the following in writing with its approval:

(1) Such enlargement, expansion, or intensification is consistent with the public interest; and

(2) Such enlargement or extension will not have a deleterious effect on property in the surrounding neighborhood due to visual appearance, increased pedestrian or vehicular traffic, noise, smoke, odor, or other similar factors. Furthermore, no such enlargement, expansion, or intensification of a nonconforming use shall be permitted unless all building height, yard, coverage, and off-street parking and other requirements of this chapter for the district in which such use is located are adhered to.

~~In the event that a written protest against any enlargement, expansion or intensification of a nonconforming use, duly signed and acknowledged by the owners of 51 percent or more of the parcels of land located in whole or in part within 1,320 feet of the property line of the land upon which the enlargement, expansion or intensification is to occur, such enlargement, expansion or intensification shall not be allowed, except by board of appeals approval. Each page of the protest shall describe the land that is the subject of the proposed enlargement, expansion or intensification, a statement that the people signing the petition oppose the proposed enlargement, expansion or intensification and a statement describing the reasons for the opposition to the proposed enlargement, expansion or intensification. Any person signing a petition on behalf of an entity owner shall specify in the petition the name of the entity and the legal capacity on behalf of the entity in which he or she is signing the petition. The city shall conclusively determine which parcels are in whole or in part within 1,320 feet of the land upon which the enlargement, expansion or intensification is to occur by utilizing the buffer or notification feature of the current version of the city's GIS software. Any such protest must be filed with the clerk not later than 12:00 noon on the Thursday preceding the planning commission meeting at which the proposed enlargement, expansion or intensification is on the agenda. In the case of a petition circulated by any individual(s) among multiple owners (as opposed to an individual acknowledgment by any singular owner), each circulator shall include an acknowledgment made under penalty of perjury on the petition certifying that the circulator is an owner qualified to protest under this section; that the circulator personally circulated the petition and personally obtained each of the signatures; that the circulator knows that the signers are also owners qualified to protest under this section and that the address of each owner is correctly included on the petition; that the circulator knows the owners signed the petition with full knowledge of its content; and, that the circulator knows each signer signed on the date stated opposite his or her name.~~

#### SECTION IV

Section 58-88(h) of the Mequon Municipal Code is created to read as follows:

(h) *Denials of conditional use permits.* If a conditional use permit application is denied, the denial may be appealed to the circuit court through the certiorari procedures contained in section 58-45.

#### SECTION V

Section 58-234(e)(2) of the Mequon municipal code is amended to read as follows (NOTE: Deleted text is ~~struck through~~; Added text is **bolded and underlined**):

(2) *Council review.*

a. The common council shall review an approved concept development layout plan for a conservation subdivision, as described in section 58-

234(e)(1)), upon the occurrence of and as follows:

1. ~~In the event of a written request from two aldermen or one alderman and the mayor, **at which time** the concept development layout plan shall be referred to the common council and shall not be effective unless confirmed by the common council.~~

~~2. In the event of a written protest against the concept development layout plan, duly signed and acknowledged by the owners of 51 percent or more of the parcels of land located in or whole or in part within 1,320 feet of the property line of the land included in such conservation subdivision, the development layout plan shall be referred to the common council and shall not become effective except by the favorable vote of six members of the common council. Each page of the protest shall describe the land that is the subject of the proposed conservation subdivision, a statement that the people signing the petition oppose the concept development layout plan and a statement describing the reasons for the opposition to the concept development layout plan. Any person signing a petition on behalf of an entity owner shall specify in the petition the name of the entity and the legal capacity on behalf of the entity in which he or she is signing the petition. The city shall conclusively determine which parcels are in or whole or in part within 1,320 feet of the land included in the conservation subdivision by utilizing the buffer or notification feature of the current version of the city's GIS software. In the case of a petition circulated by one or more individuals among multiple owners (as opposed to an individual acknowledgment by any singular owner), each circulator shall include an acknowledgment under penalty of perjury on the petition certifying that the circulator is an owner qualified to protest under this section; that the circulator personally circulated the petition and personally obtained each of the signatures; that the circulator knows that the signers are also owners qualified to protest under this section and that the address of each owner is correctly included on the petition; that the circulator knows the owners signed the petition with full knowledge of its content; and, that the circulator knows each signer signed on the date stated opposite his or her name.~~

b. Any request for confirmation under subsection a. ~~or any protest under subsection b.~~ must be filed with the clerk not later than 12:00 noon on the third Friday following the planning commission's approval of the concept development layout plan or any material change to the concept development layout plan. The common council shall take action on the request for confirmation ~~or protest petition~~ no later than the second common council meeting following the approval of the planning commission.

~~e. If both a request for confirmation and a proper protest are timely filed, the common council shall proceed under the rules of the protest.~~

~~d.c.~~ In considering a request for confirmation ~~or a protest~~, the common council may and should attempt to modify the development layout plan to mitigate legitimate concerns presented by the members of the common council requesting confirmation ~~or the protesters~~ rather than denying.

**SECTION VI**

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

**SECTION VII**

All ordinances or parts of ordinances contravening the terms of this ordinance are hereby to that extent repealed.

**SECTION VIII**

This ordinance shall take effect and be in full force upon its passage and the day after publication.

\_\_\_\_\_  
Approved by: Andrew Nerbun, Mayor

Date Approved: April 8, 2025

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on April 8, 2025.

\_\_\_\_\_  
Caroline Fochs, City Clerk

Published: \_\_\_\_\_



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Office of Administration

**TO: Public Welfare Committee**  
**FROM: Justin Schoenemann, Assistant City Administrator**  
**DATE: April 1, 2025**  
**SUBJECT: Definition of a Structure Related to Board of Appeals Case**

### **Background**

At a prior Committee of the Whole meeting, Alderwoman Tolocko requested a discussion regarding the definition of a "structure" within the City's ordinances. That discussion was delegated to the Public Welfare Committee. This request was prompted on behalf of residents involved in a Board of Appeals case heard on January 2, which involved the placement of a generator on a residential property.

To provide context for the discussion, a link to the January Board of Appeals meeting is included below, along with the attached meeting minutes and the Board's decision regarding the appeal.

City Attorney Sajdak will be present to provide an overview of the appeal, and Community Development staff will also be available to provide information and assist the Committee in its discussions.

January Board of Appeals Packet:

<https://mequoncitywi.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=3451&Inline=True>

### **Discussion**

Based on the Committee's review of the enclosed information and the discussion at the meeting, staff seeks direction on what further action, if any, should be pursued regarding the definition of a structure within the City's code.

Attachments:

Board of Appeals Minutes 2.6.25 (PDF)

Board of Appeals Decision 2.17.25 (PDF)



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Office of the City Clerk

**BOARD OF APPEALS**  
**Thursday, February 6, 2025**  
**6:00 PM**  
**Christine Nuernberg Hall**

**Minutes**

**1) Call to Order**

**Present:**

- Chair Kathleen Massey
- Vice Chair Thomas Flanagan
- Board Member Steve Helfer
- Board Member Ramona Larson
- Board Member James Wawrzyn
- Board Member Robert Stern – **Excused**

Also present: City Attorney Sajdak, City Clerk Fochs, Building Inspections Supervisor Golden and interested public.

**2) Approve meeting minutes of January 2, 2025**

Motion to approve meeting minutes.

**RESULT:** **Approved by Voice Acclamation [Unanimous]**  
**MOVED BY:** Board Member Flanagan  
**SECONDED BY:** Board Member Helfer

<b>AYES:</b>	Massey, Flanagan, Helfer, Larson, Wawrzyn
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**3) Hear evidence concerning; debate, deliberate and decide the request of:**

**Applicant:** Jeffrey & Susan Konkel  
**Owners:** Jeffrey & Susan Konkel  
**Appeal:** Opportunity will be given to all interested in being heard concerning the petition by Jeffrey and Susan Konkel to request a variance to Mequon Code Sec 58-419(a) regarding the placement of their existing generator at 10808 N Lake View Road.

Chair Massey explained the guidelines for the Board of Appeals as well as the process for the meeting. All parties appearing before the Board of Appeals were sworn.

Susan Konkel	10808 N. Lake View Road
Jeffrey Konkel	10808 N. Lake View Road
Greg Golden	11333 N. Cedarburg Road

Attachment: Board of Appeals Minutes 2.6.25 (10212 : Structure / Generator)

Amy Daniels 10827 N. Lake View Road  
 Mark Daniels 10827 N. Lake View Road

Building Inspections Supervisor Golden began testimony on behalf of the City of Mequon by explaining that he first noted the violation of the placement of the generator during the final inspection. The R-3 zoning requires a front yard setback of 50 feet, and the current location of the generator is 23.2 feet.

The Board asked for clarification of the setback codes in regards to generators being defined as structures. Supervisor Golden recited the portion of code 58-8 defining “structure” as:

*Structure* means a combination of materials other than natural terrain or plant growth erected or constructed to form among other things, a building, shelter, sign enclosure, retainer, container, support, base, or decoration.

Supervisor Golden said the definition of structure was written to be broadly encompassing, and it includes anything that is not naturally growing. The actual generator is within a case, and that case is manmade as an enclosure or container. Similarly, an air conditioner unit is housed by an external container that protects that condenser. Both are common examples of structures.

Chair Massey pointed out Exhibit #7 from the Konkels provided within the packet, which were guidelines provided by the generator company saying to consult local codes. Supervisor Golden was unaware of any communication from the applicants related to verifying such code from the City staff before the installation.

Supervisor Golden explained the difference between the zoning for offsets and for setbacks and the measurements as determined by the ultimate street right of way. On the Plat of Survey supplied by the Konkels, it clearly shows the correct 50-foot setback as a red line. Supervisor Golden had used this survey and added his own notes to provide two highlighted spots as the alternate locations that would have met code requirements for generator placement.

The Board asked about how setbacks are determined. Supervisor Golden explained that setbacks were created many years by the City of Mequon based on zoning for safety (to prevent the spread of fire, etc.) or aesthetics, including the 50-foot setback from the road.

The Board discussed the topography surrounding the house and the two compliant placement options for the generator supplied by Supervisor Golden. One option measured 6 feet by 8 feet; the other option measured 10 feet by 10 feet. Both areas would allow for placement on concrete, would not have been affected by standing water and would have access to electricity. These site locations were discussed in regards to the location of a well pipe and landscaping.

City Attorney Sajdak clarified that some page numbers of the packet may have been incorrectly referenced by the Board. This was a result of there being a packet for the original meeting date of January 2 and the new packet created for February 6. Because of the additional submissions by the Konkels and the minutes from the January meeting, the packet pages were not identical. *For added transparency, Deputy Clerk Kong has referenced the Exhibit number or Document Name being referred to rather than a packet page number for use in these minutes.*

Applicant Jeffrey Konkell began his testimony by saying that he had called to request an inspection, and that is when he determined his contractor had not applied for a permit. Supervisor Golden would not begin an inspection until the permit was in order. The generator was placed based on the applicant's desire to avoid flooded areas of the yard, their well placement and the potential for carbon monoxide fumes near the house. The Konkells wanted to place the generator as far from the house as possible.

Susan Konkell referred to the letter supplied with their application for the variance. It described the unique shape of their property as it faces three streets, which she feels creates a hardship for them to meet all the offsets. Their surveyor calculated that only 22.1% of their property is buildable. The generator location was selected based on it having the fewest issues with water.

Ms. Konkell also questioned having the generator being defined as a structure and how that compares to electrical equipment. She referred to their Exhibits numbered 10, 11, 12 and 13 which were definitions printed from generator website discussions.

Ms. Konkell wanted to know the process for how setbacks can be changed. Chair Massey explained that this Board does not modify code from the City of Mequon; only the Common Council can approve of such changes.

Ms. Konkell shared some history of their house and property. The setbacks limited how and where they built their home from the start. They have dealt with issues regarding a 50-foot setback since they initially built on the property. A generator is a necessity based on the frequent loss of power; a portable generator was no longer a feasible option for them.

The contractor and the Konkells believed they were within the correct setbacks. It was during the process of obtaining the permit that they ran into issues with the contractor and the placement of the generator. It was installed in April, but it was September before the inspection and issues were brought to light. They didn't know that the permits had not been applied for up front. The contractor said he was open to moving the generator, but the Konkells did not like the two options provided by Supervisor Golden. There would be an additional cost to move it.

The Konkells do not believe the generator can go closer to the house as the ground is not settled, and it could sink. According to their well pump company, they need to keep 25 feet of clearance to maintain the well pump. The Konkells feel that the well pump access and the amount of potential standing water create a hardship with this property. The Konkells are also trying to be good neighbors and avoid placing the generator too close to the neighboring property while getting as far from their own house as possible. The current placement is facing the park and thus away from neighbors. It is also in a higher spot of their yard to avoid potential standing water.

Mr. Daniels and his wife are neighbors to the northwest of the Konkells. They attested to the amount of water that drains and stands due to heavy rains or spring thaw. Mr. Daniels believes the current location of the generator is the best spot, especially due to the water. Other locations would be closer and noisier for the surrounding neighbors. He wanted to emphasize that the

Konkels take meticulous care of their yard. He had no doubt that the Konkels would apply the same care to landscape the area around the current generator.

Ms. Daniels reiterated that the unique landscape and topography of the Konkels’ property created a challenge in placing the generator. The Daniels would both support allowing the Konkels to keep the generator in its current spot.

Board Member Larson asked for clarification of a structure versus a container as it relates to a generator. Supervisor Golden and City Attorney Sajdak provided examples of structures such as a premade shed or home. These can be assembled by a manufacturer and placed on a property and are structures just as the generator or an air conditioner unit would be.

Ms. Konkel cited Exhibit 11 from Electrical Contractor Magazine which discusses NEC code and definitions of Building, Structure or Equipment. She interpreted this to mean their poured concrete pad would be the actual structure, not the generator. She further believes the generator should be looked at as electrical equipment not a structure.

Supervisor Golden explained that he is a trained Master Electrician and is familiar with NEC codes mentioned in that article. However, when performing his inspections for the City he must adhere to both NEC and the zoning code established by the City of Mequon. When he performs an inspection, he makes sure the electrical and gas codes are met as well as the zoning. He looks at the placement to ensure it meets setbacks and also that it conforms to the electrical and gas codes to be safe within those guidelines.

Motion to close public hearing.

<b>RESULT:</b>	<b>Approved by Voice Acclamation [Unanimous]</b>
<b>MOVED BY:</b>	Board Member Massey
<b>SECONDED BY:</b>	Board Member Helfer

<b>AYES:</b>	Massey, Flanagan, Helfer, Larson, Wawrzyn
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Having closed the public portion of the hearing, the Board continued its discussion on the record before making its decision. The Board members discussed whether the generator is a structure and subject to the setback requirements. While both the Konkels and the Daniels showed the challenges posed by the property, the City had provided at least two alternative locations that would comply with the setbacks.

Board Member Helfer said the code’s definition of structure could be clearer especially how it refers to a “closure” or “container” around a piece of equipment. He also commented on the levels of water shown in some of the exhibits and felt there was hardship related to the concerns by the applicants of water on the property.

Board Member Flanagan said a guideline for installing the generator says to be at least 18 inches from the house. He asked if other guidelines stipulate why this unit could not be placed closer to the house because the Kohler guidelines also said it can be closer. While the Konkels did not like the options provided by the City and had poor guidance from their contractor, that does not

Attachment: Board of Appeals Minutes 2.6.25 (10212 : Structure / Generator)

create a hardship. He also suggests that something be brought to the Common Council to address the language in ordinances to make the definition clearer.

Board Member Larson wanted to clarify the difference between a fully constructed container and something that is assembled and then placed on a homeowner’s property. She agreed with Board Member Helfer.

Motion to deny the variance.

**RESULT:** Approved by Roll Call Vote [3 to 2]  
**MOVED BY:** Board Member Wawrzyn  
**SECONDED BY:** Board Member Massey

**AYES:** Massey, Flanagan, Wawrzyn  
**NAYS:** Helfer, Larson

**4) Adjourn**

Motion to adjourn at 8:09 PM

**RESULT:** Approved by Voice Acclamation [Unanimous]  
**MOVED BY:** Board Member Helfer  
**SECONDED BY:** Board Member Wawrzyn

**AYES:** Massey, Flanagan, Helfer, Larson, Wawrzyn

Respectfully Submitted,

*Beth Kong  
Deputy Clerk*

Attachment: Board of Appeals Minutes 2.6.25 (10212 : Structure / Generator)

## CITY OF MEQUON BOARD OF APPEALS

In re the application of Jeffrey and Susan Konkel  
for a variance from § 58-419(a) of the Mequon  
Municipal Code for the Property located at  
10808 N. Lake View Road, Mequon, Wisconsin

FINDINGS OF FACT  
AND DECISION

¶1 This matter came before the City of Mequon Board of Appeals on February 6, 2025, at 6:00 pm in Christine Neurnberg Hall in Mequon City Hall following due notice by publication and first-class mail to the Applicant. Members present were Massey, Larson, Helfer, Wawrzyn and Flanagan.

¶2 This application is a request for a variance from the provisions of section 58-419(a) of the Mequon Municipal Code. Specifically, this application seeks a variance from the provisions that require all structures to meet the setback requirements of the applicable zoning district. The Applicants, Jeffrey and Susan Konkel, appeared in person and were sworn on oath and gave testimony in this matter. The City Department of Community Development appeared by Building Inspections Supervisor Greg Golden, who was also sworn on oath and gave testimony. Mark and Amy Daniels also appeared, were sworn on oath and gave testimony in support of the variance request. Based upon the testimony presented and the evidence before it, the Board of Appeals makes the following findings, determinations, and decision:

¶3 The subject property (the "Property") is located at 10808 N. Lake View Road, Mequon, WI 53092, which is within the R-3 single-family suburban residential zoning district. The Property is owned by the Applicants and is improved with a single-family residence in which the owners reside.

¶4 The Property is unusual in that it is bounded on three sides by road right-of-way (“ROW”)—Lake View Road on the west, Ravine Drive on the south, and Ravine Court on the east. Each of these roadways are classified as a local street by the City. While the Property has a Lake View Road address, the residence is oriented such that it faces south towards Ravine Drive, and driveway access to the Property is also from Ravine Drive.

¶5 In 2024, the Applicants had a whole-house generator installed on the Property. The generator was installed to the south of the residence off its southwest corner. The generator is located 23.2 feet from the ultimate road right-of-way of Ravine Drive.

¶6 During the final inspection of the generator installation, Building Inspections Supervisor Golden identified that the generator was installed within the required 50-foot setback, and required it to be relocated to a code-complaint location.

¶7 The Applicants seek a variance to allow the generator to remain in the installed location within the setback. In support of their application, the Applicants advance multiple theories including a code interpretation issue surrounding the definition of structure, three hardships, and a host of other factors related to the placement of the generator.

¶8 Before addressing the specifics of the Applicants’ arguments, an overview of the regulatory framework surrounding this request is appropriate. The City’s zoning code is established pursuant to the authority granted to it under Wis. Stat. § 62.23(7). See Mequon Code § 58-1. The code establishes numerous zoning districts, each with its own specific use regulations, and specific bulk regulations related to the physical characteristics of the development on a property. For residentially zoned districts,

these bulk regulations are found in § 58-249. For properties within the R-3 single-family suburban residential zoning district, § 58-249 establishes a minimum building setback of 50 feet from the ultimate road right-of-way of any adjacent street. This setback also applies to all structures which are not buildings. See Mequon Code § 58-419(a) (“All structures shall be subject to the setback, offset, building size and open space requirements of this chapter . . . .”)

¶9 With respect to the code interpretation issue advanced by the Applicants, they argue that the generator is not a structure and, accordingly, is not subject to the setback requirements. Thus, the Applicant’s argument requires the Board to interpret the code to determine whether the generator constitutes a structure. “Structure” is defined in § 58-8 of the Municipal Code to mean “a combination of materials other than natural terrain or plant growth erected or constructed to form among other things, a building, shelter, sign enclosure, retainer, container, support, base, or decoration.” When interpreting statute or ordinances, “language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” State ex rel. Anderson v. Town of Newbold, 2021 WI 6, ¶ 19, 395 Wis. 2d 351, 360, 954 N.W.2d 323, 327 (citations omitted). Furthermore, language is interpreted “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” Id.

¶10 The first issue raised centers around whether the generator “erected or constructed.” The Applicants suggest that because the generator is not made on the

Property, but instead is just placed on the property, that it is not a structure under the code. This defies the common plain meaning of the words. “Erect” means “to put up by the fitting together of materials or parts” or to “to fix in an upright position.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/erect> (last visited February 10, 2025). Similarly, “construct” means “to make or form by combining or arranging parts or elements.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/constructed> (last visited February 10, 2025). Critically, there is no question that the generator itself is a “a combination of materials other than natural terrain or plant growth.” Nowhere in the definition does it state that the construction needs to be completed completely on the property. Indeed, there are numerous items that can be built off-site and placed on a property such as a storage shed or a mobile home—each of which would clearly be considered structures. Additionally, the testimony and evidence before us is that the generator is not simply placed on the ground, but instead a concrete pad is first created upon which the generator is mounted. The generator is also connected to the gas line on the property as well as being connected to the residence’s electrical power system. Therefore, the generator clearly fits together, combines, or arranges materials, parts, or elements. The generator also is fixed in an upright position. Accordingly, the generator is clearly erected or constructed on the Property under the plain definition of the words.

¶11 The second component of the Applicants’ argument is that the generator is not “a building, shelter, sign enclosure, retainer, container, support, base, or decoration.” The Department of Community Development argues that the generator has a

protective box around the outside of the generator equipment and, as such, constitutes a container. Moreover, as discussed above, the generator installation also requires a concrete base. Accordingly, the Board finds that the generator squarely fits within the provided definition. However, it is also important to note that within the definition, the Common Council utilized the words “among other things.” The courts have regularly held that this phrase, like other similar phrases (“including but not limited to,” “any and all,” etc.) are a signal to construe the language broadly and with “an expansive meaning indicating that the words that follow the general phrase are but a part of the whole.” Oconomowoc Area Sch. Dist. v. Cota, 2024 WI App 8, ¶ 29, 410 Wis. 2d 619, 645–46, 3 N.W.3d 736, 749, review granted, 2024 WI 33, ¶ 29, 9 N.W.3d 272 (citation omitted)(cautioning against the “crabbed reach” of the language). Thus, even without the specific finding related to the generator being a container, or the generator containing a base, the generator nonetheless satisfies the definition of structure because it is similar to the list of items contained in the definition, which the Common Council clearly used to make the definition broad and all-encompassing. All of these items, including a generator, have commonalities in that they are man-made items that raise above the ground surface. Broadly regulating structures appears to be a valid concern of the Common Council in light of the testimony in this matter relating to neighbor concerns about their views and noise.

¶12 Applicants’ final argument is that the generator is not a structure because other regulations, such as the National Electrical Code, classifies a generator to be equipment and not a structure. This argument fails because the City is not imposing the requirements of these other codes when it looks to determine whether the

required setback under the zoning code is met. None of these other codes contains a definition of structure that is the same as the definition of structure under the zoning code.

¶13 Applicants also argue that the generator meets the setback requirements when measured from the edge of the road surface. As part of this argument, the written materials submitted by the Applicants' and included in the meeting packet argues that the setback should not apply to Ravine Drive and Ravine Court as they are not public streets. Aside from the fact that this argument was not fully developed at the hearing, the argument fails because it is inconstant with the code and with the testimony. Section 58-8 defines a setback to be "the horizontal distance between any structure and the base setback line." The base setback line "means the edge of the established ultimate street right-of-way." Id. The testimony provided by the City is that the ultimate street right-of-way line is not the same as the edge of the pavement. The Board takes official notice of Resolution No. 441, which sets the ultimate street right-of-way for all three streets involved in this matter at 60 feet (30 feet in each direction from the centerline of the road). Furthermore, the Applicants' own testimony concerning the City's vacation of a portion of the Ravine Court right-of-way to make the Property large enough to meet the minimum lot size requirement of the Code belies their argument that the remainder of the right-of-way is not public.

¶14 Having rejected the Applicants' code-based arguments, the Board must now consider whether the Applicants have met the criteria for the issuance of a variance to allow the generator to stay within the setback. The Applicants advance two hardships to justify their variance request.

¶15 The first hardship advanced by the Applicants is that the unique layout of the Property itself constitutes a hardship because there are three streets adjoining the Property. While this is unusual in that generally a corner lot might only have two adjacent streets, there are other examples such as 10004 and 1007 N. Otto Road—both of which are bounded by Zedler Lane, Otto Road, and Vintage Drive. Critically, the Applicants' argument fails to connect the dots between the unique layout and hardship. By Applicants' own admission, alternative locations for the generator exist, and the additional setback from the third street does not prohibit these locations. See Snyder v. Waukesha Cnty. Zoning Bd. of Adjustment, 74 Wis. 2d 468, 477, 247 N.W.2d 98, 103 (1976) (“Because the restriction does not especially affect appellant's lot, it may not constitute hardship or difficulties which justify a variance.

¶16 The second hardship advanced by the Applicants centers around the water issues on the Property. The City's Inspections Department had indicated two locations on the Property where the generator could be placed. Applicants contend that water issues (and in one case the location of the residence's HVAC system air intakes) make these locations less than ideal. During testimony, the Applicants also indicate that there were locations on the Property other than the two identified by the City where the generator could be located. What the Applicants fail to address is how the water issues are unique to the Property and why they cannot be resolved through grading or locating in another location. Based upon the testimony, the Board understands that the neighborhood as a whole has water issues. Applicants Photo #2 shows water on an adjoining property. Mr. Daniels testified that his property also had water, and there was also testimony that the County was exploring retaining ponds

in Virmond Park (located just south of the Property) to address water issues. Courts have routinely held that a hardship must be unique to a property in order to justify a variance. A

[h]ardship is not peculiar to the applicant's land if it is shared by a neighborhood or an entire area; a shared hardship will not support the granting of a use variance to relieve it. Thus, traffic problems common to a neighborhood and soil deficiencies common to an area are shared hardships which are not unique. Where the hardship imposed upon an applicant's property is no greater than that suffered by nearby lands, the board of adjustment may not grant a variance to relieve it. To grant such relief would be unfair to owners who remain subject to the general restrictions of the zoning ordinance, and it would endanger the community plan by piecemeal exemption.

Arndorfer v. Sauk Cnty. Bd. of Adjustment, 162 Wis. 2d 246, 255–56, 469 N.W.2d 831, 834 (1991)(citing 3 Anderson, American Law of Zoning 474–76 (3d ed. 1986). See also Anderson, American Law of Zoning, sec. 14.55, at 32 (1968); 8 McQuillin, Municipal Corporations, sec. 25.167, at 543—45 (3d ed. 1965).

¶17 Grading the property might be a significant cost. Furthermore, the testimony of the Applicants was that some of the other locations might not be economically feasible given the distance gas and power lines would need to be run. However, financial hardship alone does not authorize a variance. See State v. Winnebago Cnty., 196 Wis. 2d 836, 845, FN. 9, 540 N.W.2d 6, 10 (Ct. App. 1995).

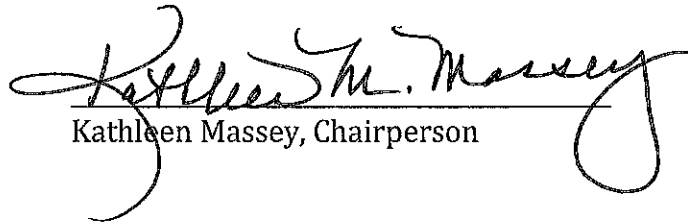
¶18 It is clear that the Applicants have a preferred location for the generator. Their reasons are purely personal to them and not based on a unique characteristic of the Property. A hardship which is purely personal to the property owner does not satisfy the requirements to justify a variance. See 3 Rathkopf's The Law of Zoning and Planning § 58:20 (4th ed.); 2 Am. Law of Zoning § 13:15 (5th ed.). In addition, it is also

clear that the Applicants are concerned about disturbing their neighbors. While admirable, this is also not a hardship which justifies a variance.

¶19 Based upon the foregoing, the Applicant’s request for a variance from the provisions of Mequon Code § 58-419(a) to allow the installed generator on the Property to remain in its current location is hereby Denied.

Dated at Mequon, Wisconsin, this 17<sup>th</sup> day of February, 2025.

CITY OF MEQUON BOARD OF APPEALS

  
Kathleen Massey, Chairperson

Attachment: Board of Appeals Decision 2.17.25 (10212 : Structure / Generator)





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**Office of Administration**

**TO: Public Welfare Committee**  
**FROM: Justin Schoenemann, Assistant City Administrator**  
**DATE: January 6, 2025**  
**SUBJECT: Work Calendar**

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### **Meeting Topics**

#### **March**

- Community Survey (Continued)

#### **April**

- Structure Definition/Board of Appeals Case
- Protest Petition Ordinance Amendment
- Board of Appeals Ordinance Amendment
- Showroom Sales Facilities Ordinance Amendment
- Live Meeting Broadcast Pause Resolution

#### **May**

- Committee Chair Selection
- Structure Definition/Board of Appeals Case (Continued)

### **Future Agenda Topics**

- Chapter II, Article IV Review (Continued)
- Adopt-A-Median Program
- Community Outreach Initiatives
- Logo Redesign/Branding

### **2025 Completed Items**

- Community Survey
- Polling Site Locations
- Bird and Bee City Designations