Brothertown Zoning Focus

Town or County Zoning? Issues for Residents to Consider

Brothertown Zoning Overview

**Zoning** is a practice that regulates the allowable uses of land, lot size and the location, height and bulk of structures within specified zones or districts in a governmental jurisdiction. In addition to specifying and designating appropriate land uses within different zoning districts (e.g. commercial, agriculture, residential, industrial), a zoning ordinance also specifies “conditional” uses that can be allowed with restrictions or special conditions after a public hearing process.

On November 2, 2009, the Calumet County Board adopted a comprehensive revision to its zoning code. According to state law (s.59.69(5)(d) Wis.Stats), a town currently under county zoning has three choices when the county adopts a comprehensive revision: (1) within one year, approve the county revision and stay under county zoning; (2) within one year, adopt a town zoning ordinance and opt out of county zoning; or (3) do neither and have no zoning. For towns with a town zoning ordinance (like Brothertown), there are three choices: (1) opt into county zoning by adopting the new county zoning code and rescinding the town ordinance; (2) do nothing and keep town zoning (with or without revising the local ordinance); or (3) rescind the town ordinance and have no zoning.

The only Calumet County town with town zoning, Brothertown first adopted a town zoning ordinance in 1965. Towns with a town zoning ordinance are required by state law to have a Plan Commission, the members of which are appointed for 3-year terms by the Town Chairman, and a Zoning Board of Appeals. There are seven members on Brothertown’s Plan Commission. According to WI law, primary roles of the Plan Commission are development of the Comprehensive Plan (s.62.23(2) & (3) Wis. Stats), recommending changes in the zoning ordinance to the Town Board, and reviewing certain types of development as required by state law (s62.23(5) Wis. Stats). Plan Commissions may also be given authority to address other issues such as conditional uses or subdivision ordinances.

Brothertown’s zoning ordinance was most recently updated in 2009 with the addition of the town’s non-metallic mining regulations. It is administered and enforced by the Plan Commission, Town Board and Building Inspector. Since 2005, the number of annual permits issued by the Town ranged from a low of 45 to a high of 71, most commonly for home improvements, accessory buildings, and farm structures. After paying the private Building Inspector expenses, the town’s annual net income from issuing permits since 2005 ranged from a low of $850 to a high of $1535, an average of approximately $20 income per permit issued.

County Involvement in the Town

No matter what type of zoning is enacted in Brothertown, Calumet County will be involved with other ordinances regulating land use in the town.

Wisconsin law requires the County to adopt and enforce shoreland zoning regulations, which it does through its zoning ordinance (Ch. 82 Calumet County Code of Ordinances). In addition, the County also administers and enforces a land division ordinance (Ch 62), a floodplain zoning ordinance (Ch 51), and stormwater and erosion control ordinances (Ch 10), along with a few additional ordinances.

If Brothertown continues with its own zoning ordinance, any amendments to the text or maps of the town’s zoning ordinance need County approval.
Issues for Brothertown Residents to Consider

As Brothertown considers whether it wants to adopt county zoning or continue its own zoning program, several questions can be considered:

- What is the town’s ability to afford and administer a local zoning code? Consider costs to prepare, administer, and enforce the code (e.g. staff and Commission time, volunteers and training, and computer applications).
- What is the town’s willingness to accept the responsibility of a local zoning code? If an aggrieved party contests an action, the town will be responsible for legal fees and judgments.
- What could the town gain by being under county zoning? What might it gain by staying under town zoning?

### Some advantages of town zoning (when compared to county zoning)

- **Flexibility and direct local control**: the town has local authority to create, adopt, and amend its own regulations in keeping with local priorities and preferences. If the town adopts the county zoning ordinance, it is legally bound by the county’s ordinance for 15 years, and it can be more difficult and time consuming to get locally requested zoning changes approved.

- **Local knowledge**: town officials and staff have more locally specific knowledge of land uses, situations, resources, conditions, etc. Objective ‘findings of fact’ leading to decisions and enforcement of the ordinance may be accomplished more quickly.

- **Independence**: the town remains mostly independent from county regulations (except for the special zoning ordinances discussed on the first page). It hires and supervises its own zoning administrator and legal staff; it retains fees generated through local permits and ordinances; and it updates and enforces its own ordinance (pending approval by the county board).

### Some disadvantage of town zoning (when compared to county zoning)

- **Local knowledge**: it may be very difficult or uncomfortable to turn down zoning requests and enforce violations on neighbors and friends, which could lead to bad decisions, to avoid local conflicts or controversy.

- **Expenses**: town taxes already pay for county staff and appointed bodies such as the Planning & Zoning Committee and Zoning Board of Adjustment. Any additional costs to administer and enforce the local ordinance (such as retaining a consultant to review development proposals) are borne by the town.

- **Time**: tasks related to updating, adopting, amending, and enforcing the zoning ordinance must be completed by knowledgeable local staff and volunteers who understand zoning. It can be time consuming, especially with new or controversial land uses.

- **Expertise**: County staff are trained, paid zoning professionals, and the level of staff expertise may be higher than what can be affordably or practically expected of part-time town officials.

### Sources:
- (1) American Planning Association Press, Small Town Planning Handbook
- (2) Calumet County Planning Department, “Pros and Cons of Town and County Zoning”
- (3) Local Government Center, UW Extension, Considerations for Adopting and Implementing Town Zoning, March 2010 presentation at Calumet County workshop
- (4) Winnebago County UW Extension, Zoning Rewrite Update, October 2009

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