PLANNING STAFF REPORT

MEMO DATE: April 1, 2019
MTG. DATE: **APRIL 10, 2019**

TO: Village of Cottage Grove Plan Commission
CC: Village of Cottage Grove Board of Trustees
Matt Giese – Village Administrator
Lisa Kalata – Village Clerk
Lee Boushea – Village Attorney
Michael Maloney – Village Engineer
FROM: Erin Ruth, AICP – Village Planning Director

RE: **Potential Amendments to Ch. 198, Ch. 274, and Ch. 325 of the Village Ordinances related to 2017 Wis. Act 67 and 2017 Wis. Act 243**

BACKGROUND

Two state legislative actions, 2017 Wisconsin Act 67 and 2017 Wisconsin Act 243, made changes to the enabling statutes for local zoning ordinances along with other development related changes.

Staff has reviewed the statutory changes and prepared the following amendments to Village ordinances related to those State-level changes. The amendments pertain to three chapters: 198 – Impact Fees, 274 – Subdivision of Land, and 325 – Zoning. New text is blue and deleted text is ~~red and struckthrough~~.

PROPOSED ORDINANCE AMENDMENTS

Ch. 198 – Impact Fees

1. ***2017 Wisconsin Act 243, Section 14*** *amended 66.0617(9)(a) of the statutes to read: Except as provided in this subsection, impact fees that are not used within 8 years after they are collected to pay the capital costs for which they area imposed, shall be refunded to the payer of the fees for the property with respect to which the impact fees were imposed, along with any interest that has accumulated, as described in sub. (8). Impact fees that are collected for capital costs related to lift stations or collecting and treating sewage that are not used within 10 years after they are collected to pay the capital costs for which they were imposed, shall be refunded to the payer of fees for the property with respect to which the impact fees were imposed, along with any interest that has accumulated, as described in sub. (8). The 10-year time limit for using impact fees that is specified under this subsection may be extended for 3*

years if the municipality adopts a resolution stating that, due to extenuating circumstances or hardship in meeting the 10-year limit, it needs an additional 3 years to use the impact fees that were collected. The resolution shall include detailed written findings that specify the extenuating circumstances or hardship that led to the need to adopt a resolution under this subsection. For purposes of the time limits in this subsection, an impact fee is paid on the date a developer obtains a bond or irrevocable letter of credit in the amount of the unpaid fees executed in the name of the municipality under sub. (6)(g).

Staff recommends the following amendment to 198-5(B) to accommodate the statutory changes:

198-5(B), *Impact Fee revenues imposed and collected but not used within ~~a specified reasonable period of time after collection~~ 8 years to pay the capital costs for which they were imposed shall be refunded to the payer of the fees ~~on a prorated proportional basis, as determined by the Utility Commission, to the current record owner or owners of the property~~ with respect to which the impact fees were imposed, along with any interest that has accumulated, as described in sub. (A). ~~Reasonable time periods for expenditure of impact fee revenues shall be within five years after the recommended time for commencement of construction, expansion, or improvement of a specific public facility identified in a facilities needs assessment report, or within 20 years after the projected loan obligations undertaken for a project to be satisfied.~~ Impact fees that are collected for capital costs related to lift stations or collecting and treating sewage that are not used within 10 years after they are collected to pay the capital costs for which they were imposed, shall be refunded to the payer of fees for the property with respect to which the impact fees were imposed, along with any interest that has accumulated, as described in sub. (A). For purposes of the time limits in this subsection, an impact fee is paid on the date a developer obtains a bond or irrevocable letter of credit in the amount of the unpaid fees executed in the name of the municipality.*

2. ***2017 Wisconsin Act 243, Section 11*** *amended 66.0617(6)(g) regarding impact fees to read: Except as provided under this paragraph, shall be payable by the developer or the property owner to the municipality in full upon the issuance of a building permit by the municipality. Except as provided in this paragraph, if the total amount of impact fees due for a development will be more than $75,000, a developer may defer payment of the impact fees for a period of 4 years from the date of issuance of the building permit or until 6 months before the municipality incurs the costs to construct, expand, or improve the public facilities related to the development for which the fee was imposed, whichever is earlier. If the developer elects to defer payment under this paragraph, the developer shall maintain in force a bond or irrevocable letter of credit in the amount of the unpaid fees executed in the name of the municipality. A developer may not defer payment of the impact fees for projects that have been previously approved.*

   Staff recommends the following amendment to 198-7 to accommodate the statutory changes:

198-7, Payment of Impact Fees. All required impact fees, unless expressly excepted in a section of this chapter or unless meeting the criteria set forth in Wis. Stat. 66.0617(6)(g), shall

be paid prior to the issuance of a building or plumbing permit, or both, whichever permits are applicable. Fees meeting the criteria set forth in Wis. Stat. 66.0617(6)(g) may be deferred as described in that statute. Impact fee payments shall be assumed to be the responsibility of the owner of record at the time the building or plumbing permit, or both, is required.

Ch. 274 – Subdivision of Land

1. ***2017 Wisconsin Act 243, Section 52*** *amend the statutes regarding sureties for public improvements in subdivisions.*

   Section 52 amends 236.13(2)(am)(1) to read: (a) As a further condition of approval, the governing body of the town or municipality within which the subdivision lies may require that the subdivider make and install any public improvements reasonably necessary or that the subdivider provide security to ensure the subdivider will make those improvements within a reasonable time. The governing body may not require the subdivider to provide security at the commencement of a project in an amount that is more than 120 percent of the estimated total cost to complete the required public improvements. (b) The subdivider may construct the project in such phases as the governing body of the town or municipality approves, which approval may not be unreasonably withheld. If the subdivider's project will be constructed in phases, the amount of security required by the governing body under subd. 1. a. is limited to the phase of the project that is currently being constructed. The governing body may not require that the subdivider provide any security for improvements sooner than is reasonably necessary before the commencement of the installation of the improvements. (c) If the governing body of the town or municipality requires a subdivider to provide security under subd. 1. a., the governing body may not require the subdivider to provide the security for more than 14 months after the date the public improvements for which the security is provided are substantially completed and upon substantial completion of the public improvements, the amount of the security the subdivider is required to provide may be no more than an amount equal to the total cost to complete any uncompleted public improvements plus 10 percent of the total cost of the completed public improvements. (d) This paragraph applies to all preliminary and final plats, regardless of whether submitted for approval before, on, or after August 1, 2014.

   Staff recommends the following amendment to 274-10 to accommodate the statutory changes.

274-10. Improvements. The subdivider or land divider shall, before the recording of the plat or certified survey map, enter into a contract or developer agreement with the Village agreeing to install the required improvements and shall file with said contract or developer agreement a performance bond meeting the approval of the Village Board and meeting the criteria described in Wis. Stat. 236.13(2)(am)(1m), letter or credit, ~~or~~ a certified check, or any combination thereof, at the subdivider's option in an amount equal to the estimated cost of the improvements, said estimate to be made ~~by the Village Board after review and recommendation by the Village Engineer~~ by the process defined in Wis. Stat. 236.13(2)(am)(1)(d), as a guarantee that such improvements will be completed by the subdivider or land divider or his subcontractors not later than two years from the date of

recording of the plat and as a further guarantee that all obligations to subcontractors for work on the development are satisfied. The subdivider may construct the project in such phases as the Village Board approves, which approval may not be unreasonably withheld. If the subdivider's project will be constructed in phases, the amount of the security required by the Village Board is limited to the phase of the project that is currently being constructed.

Ch. 325 – Zoning

1. ***2017 Wisconsin Act 67, Sections 20 through 25*** *amend the statutes regarding nonconforming uses and substandard lots.*

   Section 22 amends 62.23(7)(hb)2. to read: An ordinance may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

   Staff recommends the following amendment to 325-24(A) to accommodate the statutory changes.

325-24(A). Existing nonconforming uses. The lawful nonconforming uses of a structure, land or water existing at the time of the adoption or amendment of this chapter may be continued although the use does not conform with the provisions of this chapter; provided, however, that: ~~(2) The total lifetime structural alterations, excluding repairs, shall not exceed 50% of the current assessed value of the structure unless it is permanently changed to conform to the use provisions of this chapter.~~

(Renumber following subsection 3 to 2).

2. ***2017 Wisconsin Act 243, Section 8*** *repeals 62.23(7)(d)2m.a. of the State Statute, which required local zoning ordinances to include a provision for a protest petition. A local ordinance is no longer required to include a mechanism for a protest petition.*

   As discussed at the February Plan Commission meeting, the statutory change does not mandate that a local protest petition ordinance be removed. State statute no longer provides an option for the protest petition, so a local entity can keep, remove, or alter a protest petition ordinance as it sees fit.

   Based on direction from the Plan Commission at the February meeting to remove protest petitions from the zoning ordinance, staff recommends the following amendment to 325-100(G).

G.
~~Protest. In the event of a protest against such zoning change or amendment to the regulations of this chapter, duly signed and acknowledged by the owners of 20% or more of the land included in such proposed change, or by the owners of 20% or more of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such~~

~~changes or amendments shall not become effective except by the favorable vote of 3/4 of the full Village Board membership.~~

(Renumber following subsection H as G).

3. ***2017 Wisconsin Act 243, Section 33*** *creates 66.1102(5) in the State Statutes, which reads:*

   66.1102(5) Construction Site Fences. (a) Except for an ordinance that is related to health or safety concerns, no political subdivision may enact an ordinance or adopt a resolution that limits the ability of any person who is the owner, or other person in lawful possession or control, of a construction site to install a banner over the entire height and length of a fence surrounding the construction site. (b) If a political subdivision has enacted an ordinance or adopted a resolution before the effective date of this paragraph that is inconsistent with par. (a), that portion of the ordinance may not be enforced.

   Staff recommends the following amendments to 325-102 to accommodate the statutory changes.

325-102 (B) – The following sign uses and purposes are permitted in all zoning districts and do not require a sign permit:

(9) Construction site fences, per 325-103(B)(10).

325-103(A) – Sign purposes.

(10) Construction site fence banner sign. A banner installed over all or any part of a fence surrounding an active construction site.

325-103(B) – Sign types.

(10) Construction site fence sign. A temporary fence surrounding an active construction site which may include banner signage on all or any part of said fence.

STAFF RECOMMENDATION

Staff recommends approval of the proposed amendment.