

**Questions and Answers regarding the
possible withdrawal from Dane County Zoning**

Responses from Dane County Staff provided in blue text

Responses from Dane County Towns Association provided in red text

Edited for Application to the Town of Berry

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Q1: What is meant by zoning withdrawal? Don't towns already control Zoning? What is the history behind this?

What is meant by zoning withdrawal?

A: Zoning withdrawal or “opt out” refers to the ability of towns in Dane County, and only in Dane County, to withdraw from many county land use regulations and administration, including zoning, planning, and land/subdivision. This ability was granted by the state in legislation approved last year (2015 Wisconsin Act 178). Towns that withdraw from the county system would be required to establish their own land use and zoning administration system. See additional responses under question 3, below.

Don't towns already control zoning?

Yes, towns control zoning in concert with the county and have been doing so since 1938. That shared system of authority is established in state statutes. The county cannot unilaterally determine zoning in a town. A zoning change or Conditional Use Permit (CUP) requires *both* town and county approval. If the Town denies a petition, the county cannot override its decision. Dane County is one of the only counties in the state where towns have binding authority over CUPs – in most counties, towns are only advisory to the county. In addition, any proposed change to the text of the zoning ordinance is subject to review by the towns, and may be denied by a majority of towns.

What is the history behind this?

Supporters of town zoning withdrawal claim that the county opposes rural growth and is preventing towns from growing their tax base through development. However, a review of the record shows the vast majority of zoning proposals are approved by the county. Fewer than 1 percent of zoning petitions – less than 1 out of every 100 – have been denied by the county between 2011-2016. Over that same time period, over 2,000 new parcels were approved in towns, with an average of 219 permits / year issued for new single family home construction.

References:

Section 59.69(5)(e) of the statutes establishes the shared town/county procedure for changes to the county zoning map or text <http://docs.legis.wisconsin.gov/statutes/statutes/59/VII/69>

County land division/subdivision ordinance:

<https://danedocs.countyofdane.com/webdocs/pdf/ordinances/ord075.pdf>

A: Currently, towns in Dane County do not control their own zoning; it is controlled by the County. At one time or another, every town chose to accept county zoning. Because of a 1951 Supreme Court ruling, towns cannot repeal that choice. Towns may only control their own zoning if the county agrees to it or if the county completely rewrites their zoning ordinance. Dane County has been asked multiple times to allow towns to withdraw from County Zoning but has not allowed it. In fact, Dane County is the only county in the state to have never done a complete comprehensive re-zoning to allow Dane County Towns to opt-out. Dane County towns have been under this zoning code since 1938. Portions have been updated but the towns in Dane County may only vote on changes to Chapter 10 (Zoning). Over the years Dane County has updated other chapters in the code with no input from their towns.

Act 178 gives towns in Dane County the ability to repeal County zoning. It does not allow any town to have no zoning; towns that withdraw must have their own zoning. It also leaves shoreland and floodplain zoning controlled by the County.

Q2: If we don't withdraw now, can we later?

A: Yes, per Act 178, every three years (2017, 2020, 2023 ...) towns will be able to opt out or opt back in.

A: Yes, as allowed under 2015 Wisconsin Act 178, towns in Dane County are afforded an opt out "window" every three years beginning in 2017 (i.e., 2017, 2020, 2023 ...). In addition, Towns may withdraw from county zoning when the county comprehensively rewrites its zoning ordinance. The county is in the process of comprehensively rewriting its code right now, with an anticipated completion date of Fall 2017.

Q3: What is 2015 Act 178 and what are its effects?

A: 2015 Wisconsin Act 178 was approved by the legislature during its last session. It allows towns in Dane County, and only Dane County, to withdraw from coverage of the county zoning ordinance, the county "development plan" (comprehensive plan), and county land division/subdivision code. The Act was supported by the Dane County Towns Association.

Towns interested in opting out were required to send notice, via a resolution to Dane County, by October 20, 2016. The Town of Berry Board filed this notice, along with 11 other towns.

The immediate effects of a town withdrawing from county zoning include the following:

- Towns must adopt a comprehensive plan, official map, and zoning ordinance. There is no requirement to adopt a land division ordinance.
- Towns must adopt a zoning ordinance that is either a) essentially identical to the existing Dane County zoning ordinance, or, b) a model ordinance developed in concert with other towns that withdraw. (Town of Berry Board adopted the model ordinance.)
- Towns must hire staff and/or contract with a private firm to replace the professional zoning, planning, and land division administrative services currently provided by county staff.

The Town Zoning Ordinance maintains the existing county ordinance in place as "legacy zoning". This means that the new code only applies as individual proposals are submitted which require a zoning change or conditional use. Proposed subdivisions (5 or more lots) also require a zoning change to an appropriate zoning classification under the new code.

References:

2015 Wisconsin Act 178: <https://docs.legis.wisconsin.gov/2015/related/acts/178>

Act 178 Timeline: <https://www.countyofdane.com/plandev/>

A: It allows towns in Dane County to withdraw from coverage of the county zoning ordinance. Town residents, through their elected Board, gain control over land use planning and zoning.

Towns interested in opting out were required to send notice, via a resolution to Dane County, by October 20, 2016. The Town of Berry has filed this notice.

Q4: What advantages would Town zoning have?

A: Town residents would have the same authority over local land use which city and village residents have always had. The towns that are considering withdrawing from County Zoning have drafted and the Town of Berry has adopted, for voting purposes, a new ordinance to replace the County's. Of the County's 5-member Zoning and Land Regulation (ZLR) Committee, only one member's district is composed primarily of town residents. Cities and Villages have zoning that is controlled exclusively by residents of their own community.

As the Town would administer zoning, Town residents will no longer need to drive to downtown Madison to apply for zoning permits (needed for many building permits), rezoning or land division approvals. The new zoning ordinance will maintain the existing zoning for all parcels. All uses allowed by current zoning will be maintained after withdrawal. A parcel will only need to be rezoned to one of the new classifications if a proposed new use is not allowed with its current zoning class. The hearings and meetings on the proposal will be at the Berry Town Hall. There will no longer be a need to attend the sometimes lengthy ZLR meetings at the City-County Building.

The Town may enter an agreement, negotiated by the Dane County Towns Association, (DCTA), with General Engineering Co. (GE), that will enable the town to reserve 15% of permitting fees. Currently Dane County receives all permitting fees.

A: Proponents of town zoning argue that it will result in town elected officials having the same authority over local land use which city and village residents have always had. Proponents allege that the county opposes rural growth, has an unrepresentative zoning committee, and that the county zoning process is complicated, time consuming and inefficient.

Dane County staff have provided information attempting to refute these allegations in a bulletin available online here: https://pdf.countyofdane.com/plandev/DCP&D_Town_Considerations_Bulletin.pdf

According to the Dane County Towns Association, with town zoning, Town residents will no longer need to drive to downtown Madison to apply for zoning permits (needed for many building permits), rezoning or land division approvals. The Town would administer its own zoning. The new zoning ordinance will maintain the existing Dane County zoning for all parcels. All uses allowed by current zoning will be maintained after withdrawal. A parcel will need to be rezoned to one of the new classifications if a proposed new use – such as creating a new commercial parcel – is not allowed under its current zoning classification, or if a new subdivision is proposed (5 or more lots). The hearings and meetings will be at the Town Hall. There will no longer be a need to attend ZLR meetings at the City County Building.

Dane County will continue to issue erosion control, stormwater, well and septic permits, as well as road name assignments and rural addresses. The county will also administer and enforce shoreland, wetland, floodplain zoning.

Q5: Do Town residents get to vote on town zoning withdrawal? If so, what form does that take, and when will it occur? Who is eligible to vote, and how; any eligible voter in person?

A: Yes, under *current* state law, town residents get to vote on zoning opt out. This law applies statewide to any town seeking to withdraw from county zoning and exercise town zoning authority – see sec. 60.62(2), Wisconsin Statutes. 2015 Wisconsin Act 178 law requires that, to become effective, town residents must approve the ordinance enacted by the town board to withdraw from county zoning either at the annual town meeting in April, or at the next spring or general election to be held not later than 70 days after the referendum is called by the town board. For a referendum vote, the same rules apply as for a federal, state or local election. For an annual town meeting vote, the same rules apply as specified in section 60.11 (annual meeting), 60.13 (who presides), and 60.14 (procedure) of Wisconsin Statutes (<http://docs.legis.wisconsin.gov/statutes/statutes/60.pdf>).

A: Yes, the same rules apply as for a federal, state or local election. Photo ID will be required. There is pending legislation (AB 109) that will make the vote advisory to the Board.

Q6: Please explain what AB109 is and what effect it will have on our town vote if it is passed before April 18. Who and how many supported it at the March 8 hearing? Who and how many opposed it?

A: AB 109 simplifies a very confusing and laborious process to allow towns in Dane County to withdraw from County Zoning. It allows towns to withdraw on their schedule rather than one imposed by others to obfuscate and impede the process.

A: Proposed State Assembly Bill (AB) 109, sponsored by Representative Keith Ripp and supported by the Dane County Towns Association, would, as currently drafted, revoke the right of town residents in Dane County to have a binding vote on town zoning withdrawal. For towns in Dane County, the decision to opt out would be made solely by majority vote of the town board.

If AB 109 is passed by the legislature and signed into law before April 18, no town resident vote would be required, and any such vote still held would be rendered advisory only. It is unclear what the impact would be if AB 109 is approved after April 18.

Q7: Who will decide if we withdraw?

A: The Town Board makes the initial decision on providing notice of intent to withdraw, and whether or not to proceed with the other required actions, including adoption of a zoning code and enactment of an ordinance to opt out (see Act 178 Timeline document). The Town of Berry Board provided this notice, and adopted a Town Zoning Ordinance.

If the Town of Berry Board follows through and enacts an ordinance to officially withdraw from county zoning, the town electors (residents of the Town who are eligible to vote) must approve the ordinance for it to become effective at the Annual Town Meeting on April 18, 2017.

As noted above under Question 6, proposed Assembly Bill (AB) 109 would revise the process and remove the right of town residents to have a binding vote on the issue.

A: Right now, the Town Electors (residents of the Town who are eligible to vote). If the pending legislation passes, the vote by the Town electors will occur at a Special Town Meeting held on 30 days' notice.

Q8: When will this decision be made?

A: At the Annual Town Meeting April 18, 2017; 7:30 PM at the Berry Town Hall. If the statutes are changed before that date, then it will be at a Special Town Meeting, held on 30 days' notice.

A: If the town board enacts an ordinance to withdraw from county zoning, the decision will be put to town residents at the Annual Town meeting on April 18, 2017.

Each town board that takes the necessary actions to opt out of county zoning must decide the manner in which town residents will vote on the ordinance to withdraw from county zoning – either a referendum question on the spring or general election ballot, or a vote at the annual town meeting. All 8 towns that have taken required actions to opt out of county zoning are planning to have residents vote on the issue at their respective annual town meetings.

The Annual Town Meeting in Berry is scheduled for 7:30PM on April 18, 2017 at the Berry Town Hall.

Q9: Can residents send their vote in letter form or by proxy?

A: No. There are no provisions in State Statute allowing for voting by electors not present at the annual meeting. Had the town board decided to put the question on the spring ballot as a referendum, then in-person and absentee voting rules would have applied.

A: No, State Statute does not allow for voting by electors not present.

Q10: Shouldn't a vote as important as this be voted on by ballot rather than a show of hands at a meeting on April 18th that many people cannot attend?

A: If this vote would have taken place during a regular election, we would not have been able to provide a forum to discuss and debate the issue prior to the vote. The electors will have that chance on April 18th. The method of voting (Paper ballots, Voice, Show of Hands, etc.) will be decided by the electors prior to the vote. Again, this vote may be advisory, pending passage of proposed legislation. The Berry Town Board is scheduled to act on the opt-out resolution at its April 17th meeting.

A: Undoubtedly, a referendum question on the April election ballot would have resulted in broad input from the town's thousands of eligible electors. By comparison, a vote at the annual meeting will have more limited participation in the decision.

The Dane County Towns Association and other supporters of AB 109, which would remove the town resident vote requirement, maintain that the decision on opting out is best left to majority vote of the town board. In testimony provided at the hearing on AB 109, at least one supporter noted the ease with which the Annual Town Meeting can be stacked with electors in support or opposition to any particular issue, including zoning opt out.

As of the writing of this document, the town board has not enacted an ordinance to withdraw from Dane County zoning. If no opt out ordinance is enacted by the board, then there would be no need for a vote by electors.

If the board does enact an ordinance withdrawing from county zoning before April 18, it would need to be voted on at the annual meeting on April 18th. There is no fall general election in 2017, and the board would have needed to call for a referendum on the spring election ballot by January 24, 2017.

Q11: How will Town zoning work?

A: Each town will administer its own zoning, following their Comprehensive Plans. Towns may also choose to administer land division / subdivision regulations. The county will continue to administer shoreland, wetland, and floodplain zoning, erosion control and stormwater management, well/septic permitting, rural addressing, and street name assignments. According to the Dane County Towns Association, towns that opt out intend to contract with General Engineering Company out of Portage WI for zoning administration and enforcement.

References: See Proposed Contract for Zoning Administration Services with General Engineering Company on the Town of Berry website.

A: Each town will administer their ordinances, policies and procedures just as they have done for years. They will, as a group of towns that have withdrawn from Dane County Zoning, have one zoning code.

Q12: What Zoning Ordinance will the Town use?

A: Towns that are considering withdrawal, have met for several months and drafted a new zoning ordinance. The ordinance is currently out for comment and can be found on the DCTA website: www.danecotowns.net

Zoning Administration

Towns that withdraw will work together to amend the zoning ordinance when appropriate, consider zoning appeals, and contract with a zoning administrator (for the initial 3-year term).

If the Town contracts with GE, it will process applications, prepare zoning reports advising the Plan Commission and Town Board, provide mapping, and assist with enforcement and related issues.

Fees

GE's draft contract allows towns to charge the same fees as currently charged by Dane County. 85% of those fees will go to GE to cover the expense of administering zoning; the remaining 15% will be retained by the Town to cover any expenses incurred by the Town.

Moving Forward (after withdrawal)

- The DCTA will work with the Towns that have withdrawn to form a "Consumer Group". This group, made up of town residents, will test the new zoning code by various scenarios in mock approval processes. They will ask and answer the "What if" questions above and beyond what town work groups to date have already done.
- By State Statute, there will be a period of final review and adoption of the new opt out zoning code by the Department of Agriculture, Trade and Consumer Protection (DATCP).
- DATCP along with the DCTA will be working with Dane County towns on the individual adoption of their Farmland Preservation Programs.
- DCTA will continue its efforts with CARPC as to various mapping programs.

A: Officials from Towns that are planning to opt out drafted a model town zoning ordinance based on the Sauk County ordinance. The ordinance has been adopted by the town of Berry Board and is available on the town's website. More detailed information is provided under the headings, below.

Zoning Ordinance

The town zoning ordinance incorporates the existing Dane County zoning by reference as "legacy zoning" – this means that the county's zoning code will continue to apply to all property in the town as of the date the town withdraws from county zoning. The new ordinance will apply only if/when individual landowners propose some form of development requiring a zoning change or conditional use permit. A zoning change is also required if there is a proposal to subdivide a property into 5 or more lots. As individual properties are zoned into the new code, both the old county ordinance and the new ordinance will need to be administered and enforced by opt out towns.

Zoning Administration

Towns that choose to withdraw from county zoning may work together to amend the zoning ordinance when appropriate, consider zoning appeals, and contract with a zoning administrator (initial 3-year term). Draft contracts are currently being negotiated with General Engineering Company (GEC), a consulting firm out of Portage, WI which provides an array of engineering and related services, including zoning administration for a number of communities across central and southern Wisconsin.

Application Fees

GEC's draft 3 year contract allows towns to charge the same fees as currently charged by Dane County. 85% of those fees will go to GE cover the expense of administering zoning; 15% will be retained by the Town to cover other expenses that may be incurred by the Town.

For zoning map or text amendments, in addition to the specified application fees, applicants will be required to sign an agreement regarding the applicant's responsibility to pay all expenses incurred by the town in review of the application, as well as a cash deposit as security for payment of the expenses [Section 1.094(2)(c) of the town zoning code.]

Zoning Enforcement

Zoning enforcement services will be provided by General Engineering. As per the draft contract with GE, the Flat Fee Rate of \$290 for "Basic Zoning Violation Enforcement Investigation" would include the following:

- 1) Initiation/direction by Town Staff
- 2) Initial Field Investigation – with digital photos where needed \$100
- 3) Violation letter to property owner (Town copied on email) \$45
- 4) Final Field Investigation for Compliance (photos where needed) \$100
- 5) Compliance Memo to Property owner (Town copied on email) \$45

This Flat Fee Rate applies when the owner is cooperative and to be given a 30 to 90-day period to come into compliance. If the owner has no intention to cooperate, the situation moves away from a "Basic Enforcement Issue" and the matter would be turned over to the Town for further legal action. If the owner is uncooperative and we are unable to document the violation the cost would be \$145 for the initial field investigation and violation memo to the Town." (From GEC proposed contract for services)

References: See adopted Town of Berry Zoning Ordinance and Proposed Contract for Zoning Administration Services on the town's website

Q13: Do other towns in Wisconsin administer zoning?

A: Yes. According to officials with the Dane County Towns Association, one third of the towns in Wisconsin - including all the towns in Rock County, Brown County, Washington County and Sheboygan County - administer their zoning. Town officials and residents may wish to contact some of those towns to find out how they finance and administer their zoning programs.

While many towns in Wisconsin exercise their own zoning authority, it's important to note that no other county in the state is subject to as much development pressure as there is in Dane County. Dane County communities face many future challenges, both individually and collectively. These challenges will require a regional perspective, and that we work together in cooperation if we are to protect the wonderful quality of life we now enjoy.

Countywide planning and zoning promotes continuity in the land use pattern across a larger land area and enables a concerted response to matters that transcend town jurisdictional boundaries. It also fosters predictability for property owners, developers, and the public in terms of process, timing, cost, outcome, policy development, decision making, etc. Creating an environment where land use decisions can be made completely in isolation, wholly separate from the larger county context, is unreasoned and shortsighted.

In addition, there are inherent ‘checks and balances’ built into a joint town-county planning and zoning framework that lessen the potential for abuses of power at any single level of government. The process outcome is better by both jurisdictions being involved, often prompting compromises that better serve the public good.

A: Over a third of the towns in Wisconsin including all the towns in Rock County, Brown County, Washington County and Sheboygan County, administer their zoning. One town in Dane County, the Town of Westport, essentially administers their own zoning (Most of Westport zoning control rests jointly with the City of Middleton or the Village of Waunakee. A small portion is under Dane County control).

Q14: Who will take care of Zoning Administration?

A: Towns considering withdrawal are preparing to contract out the zoning administration duties with General Engineering Company of Portage Wisconsin.

A: Towns considering withdrawal are preparing to contract out the zoning administration duties to General Engineering Company of Portage Wisconsin.

Q15: What is the timeline for the withdrawal from County Zoning?

A: The law allows towns to withdraw beginning in 2017. It then allows withdrawal in future three-year intervals (2020, 2023, 2026, etc.). If the town board enacts an ordinance to opt out of county zoning, and that opt out ordinance is approved by town residents (if required), the plan is for town zoning to go into effect on January 1, 2018. The timelines and procedures will change if AB 109 is approved (see Question 6, above).

A: The law allows towns to withdraw beginning in 2017. It then allows withdrawal in future three-year intervals (2020, 2023, 2026, etc.). The withdrawal needs to be approved by the electors at the Annual Town Meeting on April 18, 2017. Pending legislation would make this vote advisory to a town board decision.

Q16: Didn't the Town Board already make the decision to withdraw?

A: The Board has taken several steps necessary to keep the Town's option open. The Board has discussed if the Town should withdraw and reviewed the Zoning Ordinance and Zoning Administration Contract extensively over the last 8 months. The Board will have a recommendation on the withdrawal prior to the vote by the Town Electors at the Annual Election on April 18, 2017. Pending legislation would make the vote of Town electors take place at a Special Town Meeting called on at least 30 days' notice.

A: The Town of Berry has timely voted to provide notice of its intent to withdraw from county zoning and has adopted the Town Zoning Ordinance.

The Town Board has not yet enacted an ordinance to officially withdraw from county zoning, which is the next required step in the process. The Plan Commission unanimously voted to recommend to the Town Board that the town of Berry opt out.

There will only be a town resident vote on opt out if the Town Board enacts an ordinance to withdraw from county zoning.

Q17: I understand that Dane County is in the process of a complete rewrite of its zoning code and this will allow towns to withdraw when this is adopted. Are there differences between Act 178 and the Dane County zoning code re-write? If so, what are they?

A: Yes, under existing state law, towns could also withdraw upon completion of the county zoning code rewrite. Opting out through Act 178 gives town zoning and plat review authority, and removes the requirement that the county board review and approve of a town zoning ordinance. Opting out as a result of the zoning code re-write gives towns zoning authority, but towns would still need to work with the county for land division review and approval.

A: Opting out through the State Legislation gives town zoning and plat review authority. Opting out of county zoning after a re-write of the zoning code only gives towns zoning authority; towns will still need to work with the county for land division approval. Opting out was also attempted in 1998 after a rewrite of the Dane County zoning code. A Dane County judge ruled that the rewrite was not comprehensive enough to warrant allowing towns to withdraw. This may happen again with this current rewrite. Act 178 allows Dane County towns to option out.

Q18: What are the steps and time frame for opting out under Act 178?

A: The Town, in order to give the Town Electors the option to withdraw, has already sent a withdrawal notice to the county clerk and every town in the county, stating it intends to enact an ordinance to allow the Town to opt out of county zoning; re-adopted its Comprehensive Plans, and the Official Town Map. The withdrawal ordinance will need to be approved by the Town Electors at the town Annual Meeting, April 18, 2017. Pending legislation would make this vote advisory to a town board decision.

A: The steps and time frame for opting out under Act 178 differ slightly depending on the manner in which town residents vote on the question.

Steps and timeframes based on residents voting at the Annual Town Meeting on 4/18/17.

1. Town board provides minimum 180-day advance notice of town's intent to withdraw from county zoning - March 2, 2016 (earliest) - October 20, 2016 (latest).
2. Town board adopts a zoning ordinance, comprehensive plan, and official map - November 3, 2016 (earliest) - February 17, 2017 (latest).
3. Town board enacts ordinance withdrawing from county zoning - January 2, 2017 (earliest) - April 18, 2017 (latest).
4. The enacted opt-out ordinance is voted on at the town annual meeting – April 18, 2017.

Steps and timeframes based on residents voting on a referendum - Spring Election 4/4/17.

1. Town board provides minimum 180-day advance notice of town's intent to withdraw from county zoning - March 2, 2016 (earliest) – July 28, 2016 (latest).
2. Town board adopts a zoning ordinance, comprehensive plan, and official map - November 25, 2016 (latest).
3. Town board enacts ordinance withdrawing from county zoning - January 2, 2017 (earliest) – January 24, 2017 (latest).
4. Town board calls for a referendum on zoning withdrawal ordinance – January 24, 2017 (latest).
5. The enacted opt-out ordinance is voted on as a referendum on April 4, 2017 election ballot.

If the Town of Berry Board enacts an ordinance to withdraw from county zoning, to become effective, the withdrawal ordinance will need to be approved by the Town Electors at the town Annual Meeting, April 18, 2017, or a Special Town Meeting, if the law is changed.

If Assembly Bill 109 is approved, it would remove the right of town residents to have a binding vote on zoning withdrawal.

Q19: When will zoning authority take effect under Act 178?

A: According to representatives of the Dane County Towns Association, for towns that opt out, the new zoning authority will begin on January 1, 2018.

A: The new zoning authority will begin on January 1, 2018.

Q20: I heard that Act 178 makes changes to how Town Comprehensive Plans are adopted. Can you explain?

A: The Act requires that Dane County adopt Town Comprehensive Plans “without change.” Dane County can no longer require changes prior to their approval/adoption. This puts town plans on the same level as city and village plans that are directly adopted by Dane County. At recent County meetings, it was stated that they are interpreting this clause of Act 178 to only apply to towns that have opted out. Dane County Towns Association disagrees with that interpretation. It was written to apply to all towns in Dane County regardless of whether they opt out.

A: The Act requires that Dane County adopt the Comprehensive Plans of towns that withdraw from county zoning “without change.” Dane County could no longer request that towns change their plans, or refuse to adopt portions of a town plan that county officials believe conflict with the county plan.

Q21: How will towns fund this?

A: Towns that opt out plan to charge the same fees as currently charged by Dane County. Under the draft contract with General Engineering, those fees would be split 85% to General Engineering, and 15% for the Town to cover other zoning administration expenses. As described above in question #11, applicants will be responsible for all additional costs incurred in the course of reviewing a zoning map amendment proposal.

A: We plan to charge the same fees as currently charged by Dane County. Those fees will be split, likely 85% to the Zoning Administrator and 15% for the Town to cover miscellaneous expenses including enforcement. The DCTA has also discussed with the Wisconsin Department of Revenue, transferring other fees from the County’s tax levy to the towns.

Q22: What fees do Zoning Permits issued by Dane County generate on an annual basis? Of this, what funds will be retained by the Town?

A: Berry has only a handful of applications a year but would retain 15% of those fees.

Q23: How much Staff time and expense will be added by bringing the zoning permitting and the appeals process in-house?

A: According to town officials, since Town Staff will refer questions and building permits to the new Zoning Administrator, some increase in Staff's time is likely. Dane County believe the impact to be significantly greater. As indicated under the draft contract for services with GE, enforcement issues may take up more of staff time since the "Basic Zoning Violation Enforcement Investigation" does not guarantee resolution of an enforcement issue.

A: Since Town Staff will refer questions and building permits to our new Zoning Administrator, we expect some limited increase in Staff's time. Enforcement issues may take up more of staff time but these come up very infrequently. There has only been one such enforcement issue in the last 10 years in Berry. Town Staff will not have to deal with the County zoning officials, as they do under the current zoning which requires a back and forth with the County, particularly when the County puts conditions on its approval, requiring the Town to review the application again, as conditioned by the County.

Q24: What is and is not covered under the contract with General Engineering?

A: The only significant difference in coverage between General Engineering and the County is enforcement. General Engineering will do limited enforcement on a per hour basis. Berry ordinances provide for the recovery of the actual costs of any enforcement action, including administration and attorneys' fees.

In the opinion of County Staff, there are many issues not adequately covered by the proposed town zoning administration system. County staff positions are funded in part by fee revenue and the general levy, and it's important to note that many county services are provided free of charge to the town, individual property owners, applicants, and town residents.

While the most significant of these services is zoning enforcement, others include, but are not limited to, consultation with county staff prior to, during, and after land use proposals are made, CSM and plat review by a Registered Land Surveyor, rezoning and Conditional Use Permit application intake, review, analyses, and reporting, and comprehensive plan drafting and review services. For a more complete listing of county services that towns should consider replicating upon opt out, please refer to page 5 of the Town Opt-Out Considerations Bulletin available here: (https://pdf.countyofdane.com/plandev/DCP&D_Town_Considerations_Bulletin.pdf)

As indicated in the draft contract, General Engineering will do limited zoning enforcement for a "flat fee" of \$290. Enforcement actions beyond that, would be at the direction of the Town Board and paid on a per hour basis per the rates listed in the contract.

For any costs beyond the flat enforcement fee, note that the hourly rate for GEC's zoning administrator is \$85-\$130/hour.

The Town will also be responsible for providing zoning information to the general public. Methods for providing public zoning information and answering questions regarding zoning will need to be determined by the town.

Q25: If the Town opts out and adopts the new zoning code, what happens to my existing zoning?

A: Existing zoning remains in place under the “legacy zoning” provision of the Town Zoning Ordinance. The new code will only apply if/when property owners propose land use changes that require a different zoning. The town will need to administer both the existing county zoning ordinance and the new town ordinance.

A: Nothing will happen to your existing status. You will not have to re-zone or make any changes. The new zoning code will adopt the existing zoning code (or legacy zoning) by reference. The new code will only be used if you decide to make changes on your property that require a different zoning. This has been an ongoing question so let’s stress the point again. The only time a property owner will utilize zoning is when they want to. If not, everything with that property stays the same.

Q26: Will I still need to go to Dane County for permits?

A: Yes, for some permits. Dane County will still handle storm water management, erosion control and shoreline zoning permits. Dane County staff currently do this permitting for cities and villages - it will be done for towns in a similar manner.

A: Yes, for some permits. Dane County will still handle well and septic permits, rural address assignment for new construction, new road name assignment, storm water management, erosion control and shoreland zoning permits. Coordination with the county on these items will be important to ensure that there are no unnecessary delays or problems in the land use permitting process.

Q27: Please provide some recent, specific examples of how County zoning has been a problem for the Town and why.

A: Dane County staff is unaware of any recent, specific problems. Previous arguments against the county have been directed toward county board supervisors and zoning committee members.

A: “Problem” is subjective and it is therefore difficult to answer the question. The enforcement has, at times, been selective and inconsistent. One of the main issues is that, after an approval process by a town, the party moves onto Dane County’s ZLR Committee. Most town personnel and even board and planning commission members that approved the petition in their town do not know the stories behind the final ZLR and county approval. The ZLR for years has imposed various additional tests and contingencies on those parties as to their land petitions. These additional items have included; environmental, air and traffic studies, hydric soil studies, implementation of non-existent polices and ordinances such a ‘long driveway’ approval, issuing other Dane County Departments such as Social Services approval, and numerous examples of items concerning mineral extraction and 500-year flood plains. The County's process also can take long periods of time and considerable expense. Again, this answer is complicated and these items were testified to in front of the legislature. It was these items and others that lead to Act 178.

Q28: Who will benefit from this opt out move? Who would it affect? Whose interests does it serve?

A; For most residents, this change would allow them to obtain a building permit without going to the County Zoning offices downtown to obtain a Zoning Permit prior to coming to the Town Hall for the permit.

Applicants wishing to divide land or change zoning would benefit by not having to go through the County's process separately from the Town's.

A: Who will benefit and whose interests are served by towns opting out is a question on which others may wish to speculate.

County Staff have concerns with regard to the level of services that town residents and officials will receive if the town opts out. There are also concerns regarding the consistency and predictability of the zoning and land division administration and enforcement process, particularly in light of the need for continued coordination with the county on a number of land use regulations that are unaffected by opt out. In addition, many land use issues are intensely political and may transcend political boundaries. The county provides an open, public forum for concerned and interested residents to make their voices heard, whether they live within the town where a proposal is made, or in a different municipality that may be affected.

The county has considerable resources to assist towns and their residents in dealing with difficult and contentious land use issues. Furthermore, an ethics code ensures that county staff and officials are held to a high standard requiring that they be, "*...independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government ensure a high standard of service to all county residents.*" (Section 9.10, Dane County Code: <https://danedocs.countyofdane.com/webdocs/pdf/ordinances/ord009.pdf>)

Q29: What would be the future process to request a building permit if we opt out? How does this differ from the current process?

A: Currently, in order to obtain a zoning permit, property owners or their agents must apply at the County Zoning office downtown prior to going to the Town Hall for a building permit. If the town opts out, permit applications would be forwarded to General Engineering for review and approval. The Town Building Inspector would simultaneously do his normal review process. Once these are done, applicants would pick up both permits, zoning and building, at the Town Hall. For new construction, owners or their agents would be responsible for obtaining any required county permits, including stormwater/erosion control, well/septic, or shoreland zoning. They would also be responsible for obtaining rural address assignments from county zoning.

A: Currently, to obtain a building permit, you must first go to the County Zoning offices downtown to obtain a Zoning Permit, prior to coming to the Town Hall for the building permit. If we opt out, you would drop off the application and we would forward it to General Engineering for review and approval. The Town Building Inspector would simultaneously do his normal review process. Once these are done, you would pick up both permits, zoning and building, at the Town Hall.

Q30: Will the town issue Conditional Use Permits or make rezoning decisions?

A: Yes, they will. Conditional Use Permits and zoning decisions along with land division are the essence of Zoning.

A: Yes. Majority vote of the Town Board will be required for any zoning map amendment (rezoning) or Conditional Use Permit approvals. Any amendment of the text of the new ordinance will be considered by a board comprised of representatives from the towns that withdraw and choose to adopt the model town zoning ordinance. Variance requests will go before a Zoning Board of Appeals, also comprised of representatives from opt out towns.

Q31: Since Dane County zoning ordinance currently contains procedure and standards of operation for mineral extraction operations, would these standards and procedures now be rewritten by the town?

A: Yes. For any *new* mineral extraction operation, the town ordinance would apply. Existing quarry operations would essentially be unaffected. The county is drafting revised procedures and standards for mineral extraction, but these will only apply in towns that elect to adopt the new county ordinance upon completion. For context, the town zoning ordinance includes the following findings in its section on Mineral Extraction:

“1.056 Non-Metallic Mining And Extraction.

(1) The Town finds that:

- (a) non-metallic mineral resources are an essential raw material for the economy.
- (b) The cost of transporting extracted sand, gravel, stone and rock is a significant percentage of the total cost of that material to its purchasers.
- (c) The cost of sand, gravel, stone and rock is a major expense for road, construction and landscaping projects, and has a direct impact on taxpayers and consumers.
- (d) Non-metallic mining extraction may have impacts on adjoining property owners if conditions are not imposed to limit unnecessary noise, dust, vibrations, traffic and water runoff, but these impacts are manageable through appropriate conditions of approval.”

References:

See Adopted Town Zoning Ordinance on Town of Berry website.

A: Yes, if the Town decides to withdraw, the Town will be working under the new Zoning ordinances. Please see section 1.056 of the proposed Zoning ordinance. Current mineral extraction operations would continue under their current agreements and kept legacy zoning within the new zoning code.

Q32: What are the risks and who is shouldering the risk of opting out? Is it a financial risk for the town to assume the responsibility for zoning administration? Who would assume those responsibilities? In the event of a zoning dispute, whose lawyers will be involved and who is paying for their time?

A: If an application for a zoning change is denied by the Town Board, the Applicant may then go the Joint Board of Appeals. There would be no lawyers involved and no legal expenses. There is always a risk of being sued regardless of whether the Town withdraws or not. If we are sued, we are protected with insurance.

A: There are risks to any municipality administering and enforcing its own land use regulations. Those include potential legal action against a town associated with its future actions on zoning and land division matters. The Town Zoning Ordinance includes a mechanism for appeals to be made, but beyond that process, matters would be resolved through municipal and/or circuit court proceedings. Similarly, for zoning enforcement actions that cannot be resolved with the cooperation of the property owner in violation, citations may need to be issued through municipal or circuit court. The county is able to effectively manage zoning enforcement actions because staff conducts the work at no charge to the town. The same is true for land use disputes that result in legal challenge – county corporation counsel has the responsibility of defending county officials or staff.

For towns that withdraw from county zoning, defending zoning decisions and decisions on conditional use permits would be the responsibility of the town and its attorney.

Q33: Currently, under Dane County Zoning, who pays the legal expenses when a developer sues? If we have Town Zoning only, who pays when a developer sues?

A: Under Dane County Zoning the County’s Corporation Counsel is responsible for defending the county’s zoning decisions. If a town withdraws from county zoning it will be responsible for defending its zoning decisions. In the event that there is a “claim for damages” resulting from litigation against the town, then insurance will cover it. According to Dane County Corporation Counsel, that is a very rare occurrence, and the vast majority of zoning litigation is not covered by insurance.

A: Currently, under Dane County Zoning, Dane County would pay legal expenses but only if they wished to do so. In the case of some “Adult Entertainment” businesses, the County decided not to defend their ordinance as it was determined to violate the First Amendment. If the Town were to opt out, it would decide to pursue the matter or not. We would then be responsible to pay our attorney’s fee unless our liability insurance would cover the legal expenses.

Q34: Have other towns gone bankrupt, or almost bankrupt due to a developer suing?

A: Municipalities in Wisconsin cannot declare bankruptcy. Again, we are protected with insurance.

A: Municipalities in Wisconsin cannot declare bankruptcy. However, significant costs can be incurred in defense of a land use decision, or as the result of a court decision against the town (see response above).

Q35: If the opt out is approved, is the town board the only body to decide zoning changes; will there be an appeal process?

A: As indicated in the Town Zoning Ordinance, variance requests and other such appeals will go to the Dane Town Board of Zoning Appeals – a 5-member board comprised by representatives appointed by the town chairpersons of participating towns that withdraw from county zoning. Initial appointments to the Board of Zoning Appeals will be made in the order that opt-out towns provide notice of intent to withdraw from county zoning, with appointments filled by subsequent respective towns over time as members’ appointments expire.

A: If an application for a zoning change is denied by the Town Board, the Applicant may then go the Joint Board of Appeals. The Joint Board of Appeals will be made up of Supervisors from the Towns that elect to withdraw

Q36: If we opt out, would the town board move toward excluding backyard chickens and bees as allowed by Dane County? Would the town board move toward prohibiting alternative energy options like solar panels and windmills?

A: The Berry Town Board would not by itself be able to change any zoning rule. It would be up to the collection of Towns who control the Zoning Ordinance. Obviously, any thoughts as to what they may or may not do would be purely speculation.

A: These are questions to ask of the town board and the other towns choosing to cooperatively withdraw from county zoning.

Backyard chickens are allowed under the existing Dane County ordinance, so presumably would continue to be allowed when a town opts out under the “legacy zoning” provisions.

The keeping of backyard bees is not listed as a permitted or conditional use in the existing county ordinance, but will be included in the county’s *new* ordinance. Therefore, backyard bees would not be available as a use if a town opts out in 2017. To allow such a use, a proposal to change the text of the town zoning ordinance would need to be made, with such change then subject to review and approval of the other participating opt out towns. Note that this procedure is outlined in state statute 60.23(34)(c)2.

The Berry Town Board would not by itself be able to change any text of the zoning code.

Q37 Do any existing consulting firms perform Zoning Administration duties?

A: Yes, there are several firms that provide zoning administration to municipalities. Those interested may wish to contact communities where those services are provided to obtain additional information.

A: Yes, there are several.

Q38: If additional services are needed from the Zoning Administrator, what is their hourly fee?

A: This would be addressed in the contract between the Town and the Firm acting as the Zoning Administrator. We are anticipating \$80-100/hour.

A: This is addressed in the draft contract between the Town and General Engineering for Zoning Administration Services.

As indicated in the draft contract with General Engineering:

“Rates [for additional services] are subject to annual review and amendment, upon 30 days advanced written notice of the revised rates to Client.”

Hourly rates for 2018 are as follows:

- Expert Witness \$250/hr
- Building Inspector \$85 - \$90/hr
- Principal \$125/hr - \$145/hr
- Field Crew Chief (1 person Total Station) \$70/hr
- Zoning Administrator \$85/hr - \$130/hr
- Field Crew Chief (1 person GPS) \$135/hr
- Structural Engineer \$125/hr - \$145/hr
- Land Survey Crew \$130/hr
- Project Engineer or Project Manager \$85/hr - \$115/hr
- GIS Staff \$60 - \$80/hr
- Registered Land Surveyor \$100/hr
- Grant & Funding Staff \$55 - \$75/hr
- Staff Engineer \$85 - \$100/hr
- Administration and Support Staff \$45/hr
- Technician \$60 - \$90/hr

The Flat Fee Rate for “Basic Zoning Violation Enforcement Investigation” which would include:

- 1) Initiation/direction by Town Staff
- 2) Initial Field Investigation – with digital photos where needed \$100
- 3) Violation letter to property owner (Town copied on email) \$45
- 4) Final Field Investigation for Compliance (photos where needed) \$100
- 5) Compliance Memo to Property owner (Town copied on email) \$45

ANTICIPATED FLAT FEE CHARGE: \$290

This Flat Fee Rate applies when the owner is cooperative and to be given a 30 to 90-day period to come into compliance. If the owner has no intention to cooperate, the situation moves away from a “Basic Enforcement Issue” and the matter would be turned over to the Town for further legal action. If the owner is uncooperative and we are unable to document the violation the cost would be \$145 for the initial field investigation and violation memo to the Town.

Q39: Who will pay these additional fees?

A: The draft contract with General Engineering would have the town retaining 15% of the application fees, and payments could be made from those funds.

As specified in the town zoning ordinance, additional fees incurred in the review of a zoning map amendment, or zoning text amendment proposal, will be the responsibility of the applicant. In addition to the application fee, applicants will be required to sign an agreement regarding the applicant’s responsibility to pay all expenses incurred by the town in review of the application, as well as a cash deposit as security for payment of the expenses [Section 1.094(2)(c) of the town zoning code.]

A: If the town felt that there may be additional services needed for a zoning application, the town and the applicant would negotiate these fees and their structure in advance. This is the current process with most towns.

Q40: Who will enforce the zoning ordinance?

A: Like other Town ordinances, the zoning ordinances will be enforced by the Town Staff as needed. The DCTA will aid Opt Out Towns with the securing of an outside legal firm to handle these cases. Towns today have similar relations with legal firms that they utilize, for example, their traffic court.

A: As indicated in the draft contract, General Engineering will enforce the zoning ordinance. As indicated under questions 11 and 41, above, enforcement actions beyond the “Basic Zoning Violation Enforcement Investigation” will be the responsibility of the town. The town Building Inspector will continue to enforcement the uniform dwelling code for 1 and 2 family structures. The Town Administrator and Attorney will be involved, as needed.

Q41: Will Dane County continue to list Town properties on AccessDane and DCiMap?

A: Yes. AccessDane and DCiMap provided tax parcel information for all properties in the county. However, zoning information would no longer be listed on AccessDane or accessible through DCiMap.

A: Yes, just as they do for cities and villages that control their own zoning.

Q42: Why withdraw now; why not wait to see how well it works for others?

A: Who are the “others?” If all towns took this approach, there would be no comparison as no town would have opted out. Regardless, all towns are different and the question is not “How did it work for our neighbor,” it is “How well did it work for us?” Moreover, the opportunity to leave Dane County Zoning comes once every three years. However, nothing prevents a Town dissatisfied with administering its own zoning from simply returning to Dane County Zoning, by simple majority vote of the Town Board. If a Town does not opt out now, it has to wait three years.

A: This is a question that the town board and residents should consider before making a decision on withdrawing from county zoning.

Q43: When will Dane County’s draft ordinance be finalized?

A: It is anticipated that the new county zoning code will be finalized and adopted in the fall of 2017. Once the county board adopts the new ordinance, towns that have not already opted out will have 1 year within which to decide whether or not to adopt the county ordinance. During that one year time period, county staff will be directly notifying all property owners and meeting with each town to present draft zoning maps showing the proposed new zoning category for each parcel of land.

A: It is important to note that opting out through the State Legislation (Act 178) and when the County ordinance is revised are very different. Opting out through Act 178 gives town zoning and plat review authority. Opting out as a result of the zoning code re-write only gives towns zoning authority, towns will still need to work with the county for land division (plat) approval.

Q44: Has anyone compared the draft Dane County ordinance with the DCTA’s model ordinance?

A: We are using legacy zoning (allowing land owners to keep existing zoning in place until there is reason to change) because that concept has worked for 20 years as the transition system in Westport. If the County has concerns about the DCTA’s ordinance, they have not shared them.

The Dane County ordinance is far from being completed. An official Public Hearing has not been scheduled. Opting out is more about how the zoning code is used and what entity is making the decisions than the code itself. It is about Dane County towns not needing two levels of governmental approval for land use decisions. It is about town’s ability to operate like cities and villages and make decisions free of County politics. It is about the arbitrary restrictions placed on re-zoning petitions and conditional use permits the County has pushed over the years. If a town’s comprehensive plan does not regulate long driveways or hydric soils, it is not the county’s place to create restrictions and encumber landowners.

Basically, under the opt out, those that are happy with the status of their zoning under the existing Dane County Ordinance can do nothing and they will keep that status. Those who want to change, can move to the new ordinance, and will not have to deal with the county Board in doing so. For the last 20 years, GEC, the proposed administrator, has been administering zoning in Westport where this same grandfathering was used, and Westport reports no confusion or uncertainty.

A County staff have been reviewing the model town ordinance, but have not undertaken an exhaustive comparison between the town ordinance and the draft county ordinance. We have a number of concerns with the model ordinance, including the retention of the existing county ordinance as “legacy zoning”. For all the complaints leveled against the county’s ordinance by supporters of town zoning opt out, it is interesting that the town zoning ordinance keeps the county ordinance in place when a town withdraws.

Towns that opt out under the model ordinance will need to administer two separate ordinances, which is likely to lead to confusion and uncertainty. There are additional concerns with the town ordinance, including procedures that apply to Conditional Use Permits and other “continuing” uses that limit decision making discretion for town boards [see, for example, sections 1.094(2)(a), 1.095(4)(c), and 1.0101(2)(c)].

The county ordinance effort is being overseen by a subcommittee that includes representatives from towns and other stakeholder groups. At the outset, a survey of town officials was conducted to help gauge attitudes and opinions on a variety of land use and zoning issues in order to help chart the direction of the re-write effort.

Town officials are notified directly of meetings which are open to the public, organized around specific issue areas, and held at locations around the county. This process helps focus discussion and fosters input from different geographic or interest based groups. In addition, county zoning and planning staff are briefed regularly and invited to bring their decades of experience to bear on proposed changes. Staff are confident that the final ordinance will be well tailored to the unique needs of Dane County.

References:

Information on county zoning ordinance draft:

https://www.countyofdane.com/plandev/zoning/comprehensive_revision_special_projects.aspx

Town zoning ordinance on town of Berry website: <http://www.townofberry.org/>