
FREQUENTLY ASKED QUESTIONS ABOUT CONDITIONAL USE PERMITS (CUP)

What is a conditional use?

A conditional use is a land-use that is designated within the zoning ordinance that is specifically allowed (by CUP) in a zoning district as long as certain standards are met. The Ordinance standards for Mower County can be found within the CUP folder with the title of “Findings of Fact”. Each zoning District lists which land uses are permitted by right (permitted use) and which are conditional. If a land use is not listed with a district as permitted or conditional; it is not allowed.

Why some uses are typically designated as conditional?

A use is typically designated in a zoning ordinance as a conditional use because of hazards inherent in the use itself or because of special problems that its proposed location may present. For example, uses that generate higher levels of traffic create higher than average levels of dust, noise or vibration are often designated as conditional uses.

What is a conditional use permit (CUP)?

A conditional use permit is a document the County uses to grant a conditional use when the general and specific ordinance standards have been met by the applicant. The use is allowed by permit only if the special concerns are address as set forth in the ordinance. Conditional use permit are authorized to a County under Minn. Statutes 394.

For what uses can a CUP be granted?

Generally CUPs are granted only for uses specifically listed in the zoning ordinance as conditional uses in a particular zoning district. If a use is not designated as a conditional use in a zoning district, then the county does not have the ability to issue a CUP without first amending the zoning ordinance to provide for such conditional use. This would of course allow other applicants to apply for a conditional use under the same standards.

What are general CUP standards?

A zoning ordinance will typically detail general standards that apply to all conditional uses. For example, some zoning ordinances provide that all conditional uses must conform to the comprehensive land use plan of the community, be compatible with adjoining properties, and be served by adequate roads and public utilities.

What are specific CUP standards?

In addition to general CUP standards, many zoning ordinances will detail specific standards that apply to a particular conditional use, such as those made for mining operations. Other specific standards may include standards for things like off-street parking and loading spaces and/or landscaping and site plans.

Who grants the CUP?

A CUP, in Mower County, is approved by the County Board of Commissioners. Planning Commission members, appointed by the County Board of Commissioners, will first consider the CUP application and make recommendations to the County Board through a public hearing process.

When can a CUP be granted?

If a proposed CUP satisfies both the general and specific standards set forth in the zoning ordinance, the applicant is entitled to the conditional use permit. *Importantly, if the applicant meets the general and specific ordinance standards, the County has no legal basis for denying the CUP.*

What kind of authority is the county exercising?

The County exercises so-called “quasi-judicial” authority when considering a CUP application. This means that the County’s role is limited to applying the **standards in the ordinance** to the facts presented by the application. The County acts like a judge in evaluating the facts against the standards. If the applicant meets the standards, then the CUP should be granted. In contrast, when the County by zoning ordinance designates certain uses as condition, the County is exercising “legislative” authority and has much broader discretion.

What is the public hearing requirement?

A proposed conditional use is allowed only after a statutorily required public hearing. The County must provide published notice of the time, place, and purpose of the hearing on a proposed CUP at least 10 days prior to the day of the hearing. The purpose of the public hearing is to help develop a factual record as to whether the applicant meets the relevant ordinance standards such that the CUP should be granted.

What is the role of neighborhood opinion?

Neighborhood opinion alone is not the valid basis for granting or denying a CUP. While County officials may feel their decision should reflect the overall preferences of the residents, their task is limited to evaluating how the CUP application meets the ordinance standards. Residents can often provide important facts to help the County address whether the application meets the standards, but unsubstantiated opinions and reactions to an application do not form a legitimate basis for a CUP decision. If neighborhood opinion serves as the sole basis of the decision, it could be overturned by a court if challenged.

When should a CUP decision be made?

A written request for a CUP is subject to Minnesota’s 60-day rule (Minn. Statute 15.99), and must be approved or denied within 60 days of the time it is submitted to the County. A County may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is considered approval. If the County receives a written request that does not contain all required information the County must send written notice within 15-business days of receipt of the request telling the requester what information is missing. This will halt the 60-day clock until the incomplete information is fully submitted.

How should the CUP decision be documented?

Whatever the decision, a County should create a record that will support their decision. If a County denies a CUP application, the 60-day rule requires the reasons for the denial be put in writing. Even if a County approves a CUP, a written statement explaining the decision is advisable. The written statement explaining the decision should address the general and specific ordinance standards, and explain the relevant facts and conclusions.

What conditions can a County attach to a CUP?

Reasonable conditions relating to the ordinance standards may be attached to a CUP based upon factual evidence contained in public record. For example, if a zoning ordinance provides that a conditional use should not have adverse visual or noise impacts on any adjacent property, the County might require specific screening and landscaping conditions to address any potential impacts established in the record.

Can a County put an expiration date on a CUP?

State Statute provides that a CUP remains in effect as long as the conditions agreed upon are observed. The attorney general has found that time limits or automatic annual review are not consistent with state law, explaining that counties may not enact or enforce provisions that allow the county to terminate CUPs without regard to whether or not the conditions agreed upon are observed. A CUP can lapse and no longer be valid if the landowner no longer uses the property for which the CUP was acquired. Mower County usually discontinues the CUP after it has not been used for a period of 365 consecutive days, or after a period of two years after granting the CUP if the use has not been established by the landowner.

What is the County wants to put a time limit on a land use?

If the County wishes to place time constraints on particular uses, then the appropriate zoning tool is an interim use permit, rather than a conditional use permit. Passed in 2008, Minn. Statute 394.303 authorizes interim use permits for temporary use of property until a particular date, until the occurrence of a particular event or until zoning regulations no longer permits it.

What happens to a CUP once granted?

A CUP is a property right that “runs with the land” so it attaches to and benefits the land and is not limited to a particular landowner. State Statute requires that CUPs be recorded with the County Recorders Office. When the property is sold, the new landowner will have the continued right to the CUP as long as the conditions are met.

When can a County revoke a CUP?

A County can revoke a CUP if there is not substantial compliance with conditions as long as the revocation is based upon factual evidence, after appropriate notice and hearing. Because a CUP is a property right, a County should work closely with the County Attorney if considering a CUP revocation.