

STATE OF WISCONSIN

WAUKESHA COUNTY

TOWN OF DELAFIELD

ORDINANCE NO. 2013-03

AN ORDINANCE TO REPEAL AND RECREATE SECTIONS 18.01(2)(b),
18.04(1)(g)(2), 18.04(3), 18.04(4), 18.07(1)(k),
18.03(2), 18.05(1)(r), 18.05(2)(d), 18.05(3)(j), 18.06(6)(b)(2),
18.07(1)(c), 18.07(1)(f), 18.07(2)(a)(4), and 18.14(2)(a),
OF THE TOWN OF DELAFIELD CODE OF ORDINANCES
REGULATING LAND DIVISION AND DEVELOPMENT CONTROL

WHEREAS, Chapter 18 of the Town of Delafield Code currently provides standards regulating land division and development control for the Town of Delafield; and

WHEREAS, the Plan Commission for the Town of Delafield has recommended that the Town Board revise Chapter 18 of the Town of Delafield Code of Ordinances to reflect changes in the provisions of Chapter 236 of the Wisconsin Statutes, entitled "Platting Lands"; and

WHEREAS, following Class 2 notice, the Town Board of the Town of Delafield held a public hearing concerning the recommendation of the Plan Commission, as provided in Section 236.45(4) of the Wisconsin Statutes Section 17.10(6) of the Town of Delafield Code of Ordinances; and

WHEREAS, the Town Board has determined that the adoption of the Plan Commission's recommendation will promote the public health, safety and general welfare of the community, lessen congestion in the streets and highways; further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land with reasonable consideration, among other things, of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land throughout the municipality, town or county.

NOW, THEREFORE, THE TOWN BOARD OF THE TOWN OF DELAFIELD DO ORDAIN AS FOLLOWS:

SECTION 1: Chapter 18, entitled "Land Division and Development Control", Section 18.01, entitled "Purpose and General Provisions", subsection (2), entitled "General Provisions", paragraph (b), entitled "Basis of Approval", of the Town of Delafield Code, is hereby repealed and recreated to read as follows:

(b) Basis of Approval

1. Compliance with Chapter 236 of the Wisconsin Statutes.
2. Compliance with any Town or County ordinance that is in effect when the subdivider submits a preliminary plat or a final plat if no preliminary plat is submitted.
3. Compliance with duly approved comprehensive plans, regional plans, County plans or comprehensive plan component including the Zoning Code and official map adopted by the Town.
4. Compliance with the rules of the Department of Safety and Professional Services, relating to lot size, lot elevation, percolation tests, test borings, etc.
5. Compliance with the rules of the Division of Highways, Department of Transportation Facilities, relating to traffic safety and preservation of public interest and investment in State trunk highways or connecting streets.
6. Compliance with rules of the State Department of Natural Resources setting water quality standards, preventing and abating pollution and regulating septic systems.
7. Compliance with the most restrictive requirements when requirements of approving authorities conflict.
8. Consideration of the Development Review Checklist as adopted by separate resolution of the Town Board which is attached hereto and incorporated herein as an exhibit, including any amendments that may be made thereto from time to time by the Town Board by separate resolution.

SECTION 2: Chapter 18, entitled "Land Division and Development Control", Section 18.04, entitled "Plat Approval Procedures", subsection (1), entitled "General Procedure", paragraph (g), entitled "Approvals to Plat", subparagraph 2., entitled "Final Plat", of the Town of Delafield Code, is hereby repealed and recreated to read as follows:

2. Final plat. If the final plat conforms substantially to the layout shown in the preliminary plat as approved, including any conditions of that approval, it shall be entitled to approval with respect to such layout.
 - a. If the final plat is submitted within 36 months of the last required approval of the preliminary plat, the Town shall take action to approve or reject the plat. If the final plat is not submitted within 36 months, the Town may refuse to approve the final plat and may require resubmittal of the preliminary plat unless the Town Board has granted an extension for the time for submission of the final plat.
 - b. The final plat may, if permitted by the Town, constitute only that portion of the approved preliminary plat which the subdivider proposes to record at that time. The Town encourages sequential filing of only that portion of the

preliminary plat which will immediately be fully improved with respect to the installation of the required improvements.

- c. The Town Board shall take action to approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider. Prior to approval of the final plat, the Plan Commission shall certify to the Town Board that all conditions of the Subdivision Control Ordinance that were in effect when the subdivider submitted the preliminary plat, or the final plat if no preliminary plat was submitted, have been met and that all fees, bonds and other financial responsibilities of the developer have been satisfied. If a plat is rejected, the reasons thereof shall be stated in the minutes of the meeting and a copy thereof or a written statement of the reasons supplied the subdivider and all objecting authorities.
- d. If the Town fails to act within 60 days of submittal and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the final plat shall be deemed approved and, upon demand, a certificate to that effect shall be made on the face of the plat by the Town Clerk.
- e. Any subdivider or his agent who offers or contracts to convey or conveys any subdivision, lot or parcel of land which lies in a subdivision, knowing that the final plat thereof has not been recorded with the Register of Deeds, may be subject to a forfeiture as provided in §18.25 of this chapter; except where the preliminary or final plat of subdivision has been filed for approval with the Town, an offer or contract to convey may be made if that offer or contract states on its face that it is contingent upon approval of the final plat and shall be void if such plat is not approved.
- f. The subdivider or his agent shall pay to the Town all costs incurred for engineering, legal and administrative work necessary to process the plat or other provisions of this chapter. At the time of the preliminary plat, the developer shall pay the estimated cost of the engineering and legal fees in an amount as set from time to time by resolution of the Town Board. At the time of submitting the preliminary plat for approval, the developer shall pay a minimum deposit in an amount as set from time to time by resolution of the Town Board. The balance of the fee shall be paid at the time the final plat is submitted for approval, if not paid prior thereto. All fees shall be paid to the office of the Town Clerk.
- g. The recommendation of any professional engineer, planner or other person that is requested by the Town to review the final plat for purposes of determining whether the final plat conforms substantially to the preliminary plat shall be included in the record of the meeting at which the final plat is considered.

SECTION 3: Chapter 18, entitled "Land Division and Development Control", Section 18.04, entitled "Plat Approval Procedures", subsection (3), entitled "Recording of Final Plat", of the Town of Delafield Code, is hereby repealed and recreated to read as follows:

- (3) RECORDING OF FINAL PLAT. (Am. #91-286) The subdivider shall file the original of the final plat with the Town Clerk, and the Town Clerk shall file it with the Register of Deeds within 12 months of the date of the last required approval and 36 months of the date of the first approval. The subdivider's filing with the Town must be at least ten (10) business days prior to the recording deadline. The subdivider shall pay to the Town Clerk, in advance, all costs and fees associated with filing the plat with the Register of Deeds. Any subdivider recording or attempting to record his final plat, instead of presenting it to the Town Clerk for that purpose, shall be subject to a penalty as provided in §18.25 of this chapter.

SECTION 4: Chapter 18, entitled "Land Division and Development Control", Section 18.04, entitled "Plat Approval Procedures", subsection (4), entitled "Procedure for Land Divisions Other Than Subdivisions", of the Town of Delafield Code, is hereby repealed and recreated to read as follows:

(4) PROCEDURE FOR LAND DIVISIONS OTHER THAN SUBDIVISIONS.

- (a) Filing. The subdivider shall submit a preliminary map to the Plan Commission in sufficient detail to determine whether the final map will meet layout requirements. A filing fee in an amount as set forth from time to time by resolution of the Town Board at the time of the filing of the preliminary map shall be paid.
- (b) Approval or Rejection. The Town Board shall take action to approve, approve conditionally or reject the certified survey or assessor's map within 90 days of submittal unless the time for approval is extended by agreement with the subdivider. The subdivider shall be notified in writing of any conditions of approval or the reasons for rejection. The certificate of approval of the Town shall be typed, lettered or reproduced legibly with nonfading black ink on the face of the final map and signed by the Town Chairman and Town Clerk.
- (c) Recording of Certified Survey Map. (Am. #91-286) The subdivider shall file the certified survey map with the Town Clerk, and the Town Clerk shall file it with the Register of Deeds in conformance with §236.34(2), Wis. Stats. within 6 months after the date of the last approval of the map and within 24 months after the first approval of the map. The subdivider's filing with the Town must be at least ten (10) business days prior to the recording deadline. The subdivider shall pay to the Town Clerk, in advance, all costs and fees associated with filing the certified survey map with the Register of Deeds. The subdivider shall also file 6 copies of the original certified survey map together with recording information in the Town Clerk's office within such time limits. Any subdivider causing his certified survey map to be recorded without submitting it as herein required within 30 days of

Town approval shall be subject to a penalty as provided in §18.25 of this chapter.

- (d) Notice of Land Division. (Created #96-427) The subdivider, at the time of application, shall certify in writing, on a form to be supplied by the Town Clerk, that all property owners within 300 feet of any boundary of the proposed land division have been notified of said land division. The application for land division shall not be considered complete for purposes of official Town action until such certification has been filed with and accepted by the Office of the Town Clerk. The failure of such notice to reach any property owner within 300 feet of the proposed land division shall not invalidate any action on the land division by the Plan Commission or the Town Board, and shall not give rise to any cause of action against the Town of Delafield or any of its officials, boards or commissions.

SECTION 5: Chapter 18, entitled "Land Division and Development Control", Section 18.07, entitled "Required Improvements and Reservations", subsection (1), entitled "General", paragraph (k), entitled "Stage Development", of the Town of Delafield Code, is hereby repealed and recreated to read as follows:

(k) Stage Development. In all instances when it shall appear to the satisfaction of the Town Board that the whole of a platted subdivision cannot immediately be fully developed by reason of unavoidable delay not caused by the developer, or for any other good reason or cause as the Town Board may reasonably determine, the Town Board may authorize the subdivider to proceed with the development of the subdivision in such stages as the Town Board approves and, in such event, the requirements of this chapter shall apply to each stage thereof when such stage(s) has been authorized for immediate improvement by the Town Board. All required improvements not installed at the time the final plat is recorded shall be guaranteed by a surety bond or other satisfactory financial guarantee approved by the Town Attorney. The amount of the financial guarantee shall be established for each stage in an amount equal to double the cost of the improvements for such stage as estimated by the Town Engineer. The Town Board shall determine when it is reasonably necessary for the financial security to be provided prior to the commencement of improvements for each stage. If the improvements for any stage(s) are not installed within 2 yrs. from the date of approval of such stage(s) by the Town Board, the Town Board may cause all uncompleted work for such stage(s) to be constructed and the parties executing the bond or financial guarantee shall be firmly bound for the payment of all necessary costs thereof.

SECTION 6: Chapter 18, entitled "Land Division and Development Control", Section 18.03, entitled "Residential Development Control System", subsection (2) entitled "Residential Development Permit Required", of the Town of Delafield Code is hereby repealed and recreated to read as follows:

(2) RESIDENTIAL DEVELOPMENT PERMIT REQUIRED. No development involving

proposed residential uses shall be accepted for consideration pursuant to Section 18.04(1) (b) of this chapter or Section 17.05. 5.A.M. of this General Code, unless residential development permits shall have been issued to the development by the Plan Commission

SECTION 7: Chapter 18, entitled "Land Division and Development Control", Section 18.05, entitled "Requirements for Plat, Certified Survey Maps and Assessor's Maps", subsection (1) entitled "Preliminary Plat", paragraph (r) entitled "Department of Commerce Information" of the Town of Delafield Code is hereby repealed and recreated to read as follows:

(r) Department of Safety and Professional Services Information. Percolation test data, test boring information and any other information requested by the Department of Safety and Professional Services for those subdivisions not being served by sanitary sewer shall be attached to and submitted with the preliminary plat, certified survey map, or assessors plat for use by the State, County and Town.

SECTION 8: Chapter 18, entitled "Land Division and Development Control", Section 18.05, entitled "Requirements for Plat, Certified Survey Maps and Assessor's Maps", subsection (2) entitled "Construction Plans", paragraph (d) entitled "Sanitary Sewers" of the Town of Delafield Code is hereby repealed and recreated to read as follows:

(d) Sanitary Sewers. When the proposed subdivision is to be served by sanitary sewers or a private sewer system serving multiple dwellings pursuant to SPS 383, Wis. Admin. Code, a system plan shall be provided indicating the general layout of the subdivision, location of existing and proposed sewers. A plan view and profile shall also be submitted.

SECTION 9: Chapter 18, entitled "Land Division and Development Control", Section 18.05, entitled "Requirements for Plat, Certified Survey Maps and Assessor's Maps", subsection (3) entitled "Final Plat", paragraph (j) entitled "Division of Health Requirements" of the Town of Delafield Code is hereby repealed and recreated to read as follows:

(j) Division of Health Requirements. The final plat of all subdivisions not served by sanitary sewers shall be marked to show preplanned soil absorption systems, if required, in accordance with SPS 385, Wis. Adm. Code.

SECTION 10: Chapter 18, entitled "Land Division and Development Control", Section 18.06, entitled "Design Standards", subsection (6) entitled "Lots", subsection (b) entitled "Dimensions", paragraph 2. of the Town of Delafield Code is hereby repealed and recreated to read as follows:

2. Lot area shall meet the minimum requirements of the Zoning Code. Residential lots to be served by private sewerage disposal facilities shall comply with the rules of the

DSPS as to minimize area where it exceeds the minimum required by the Zoning Code.

SECTION 11: Chapter 18, entitled "Land Division and Development Control", Section 18.07, entitled "Required Improvements and Reservations", subsection (1) entitled "General", paragraph (c) entitled "Utilities" of the Town of Delafield Code is hereby repealed and recreated to read as follows:

(c) Utilities. (Am. #88-200) All utility infrastructure shall be installed underground and prior to paving. Underground electric wiring for street lighting shall be installed at the subdivider's expense when requested by the Town Board. The final responsibility for suitable restoration shall remain with the developer until final acceptance is given.

SECTION 12: Chapter 18, entitled "Land Division and Development Control", Section 18.07, entitled "Required Improvements and Reservations", subsection (1) entitled "General", paragraph (f) entitled "Approvals" of the Town of Delafield Code is hereby repealed and recreated to read as follows:

(f) Approvals. The adequacy of such facilities and improvements and their proper installation shall be subject to approval of the Town Board and the Town Engineer with the acceptance of the facilities only following such approval. Upon written request of the developer, the Town Board may elect to allow the developer to file a letter of credit or other financial guarantee satisfactory to the Town Board after review and recommendation of the Town Attorney to assure completion of all uncompleted construction in order to permit filing of the final plat within the 36 months specified in Section 18.04 (3). All required improvements not installed at the time the final plat is recorded shall be guaranteed by a surety bond, irrevocable letter of credit or other satisfactory financial guarantee in an amount equal to double the cost of the improvements as estimated by the Town Engineer. The type and form of the financial guarantee shall be at the discretion of the Town Board after review and recommendation of the Town Attorney. If the improvements are not installed within one year from the date of approval of the final plat by the Town Board, the Board may cause all uncompleted work to be constructed and the parties executing the bond, irrevocable letter of credit or other financial guarantee shall be firmly bound for the payment of all necessary costs thereof.

SECTION 13: Chapter 18, entitled "Land Division and Development Control", Section 18.07, entitled "Required Improvements and Reservations", subsection (2) entitled "Construction Standards", subsection (a) entitled "Streets", paragraph 4 of the Town of Delafield Code is hereby repealed and recreated to read as follows:

4. All streets shall be graded and surfaced according to Ch. 8 of this code. The final asphalt surface shall be installed by the developer one year after the initial lift is installed, unless an extension is granted by the Town. To guarantee installation of the final asphalt surface, the developer shall file a bond or other financial guarantee in an amount determined by the Town Engineer. If the asphalt surface is not installed within one year from the installation of the initial lift of asphalt, the Town

Board may cause the final asphalt surface to be installed and the parties executing the bond or financial guarantee shall be firmly bound for the payment of all costs. Maintenance of the streets shall be the responsibility of the subdivider until acceptance by the Town.

SECTION 14: Chapter 18, entitled "Land Division and Development Control", Section 18.14, entitled "Detailed Site Analysis and Mitigation Plans", subsection (2) entitled "Site Disruption Limited", paragraph (a) of the Town of Delafield Code is hereby repealed and recreated to read as follows:

Prior to approval of a Detailed Site Analysis and Mitigation Plan, site disruption shall be limited to percolation testing in accordance with SPS 385 and clearing and grubbing reasonably necessary to perform preliminary property surveys.

SECTION 15: The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of this ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances having terms in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 16: This ordinance shall take effect and be in full force the day after its posting.

Passed and approved this 11th day of June, 2013.

Town of Delafield

By: 
Paul Kanter, Town Chairman

ATTEST:


Mary Elsner, Town Clerk

ORDINANCE NO. 2013-04AN ORDINANCE TO CREATE SECTION 17.10 (5.5)
OF THE TOWN OF DELAFIELD ZONING ORDINANCE,
REGARDING MODIFICATIONS BY SPECIAL EXCEPTION
DUE TO ERRONEOUSLY PERMITTED WORK

WHEREAS, the Town of Delafield Plan Commission initiated consideration of a possible amendment to the Town of Delafield Zoning Code, to allow the Town Board the authority to grant special exceptions in limited circumstances, pursuant to the procedures described in Section 17.10(5)(B) *et seq.*, of the Town of Delafield Zoning Ordinance; and

WHEREAS, the Town Plan Commission has initiated this possible amendment out of a concern that has been raised by citizens who allege that the Town Building Inspector permitted construction on their lots in error, resulting in open space, as defined in Section 17.02 2. of the Town of Delafield Zoning Code, being less than the open space requirements of the Town of Delafield Zoning Code; and

WHEREAS, the Town Plan Commission has found that, in fairness, leniency should be granted to property owners to some extent, if the Town Building Inspector erred in granting a permit, but this concern is best addressed on a case by case basis to ensure that the facts alleged in each case are satisfactorily proven, and to determine the extent to which leniency should be granted, if at all; and

WHEREAS, the leniency in this ordinance is granted as a privilege, not as a right or out of obligation, as it remains the law and the Town's position that the Town is not equitably estopped or in any other manner restrained from enforcing the Town Zoning Ordinance even if violations arise out of work conducted pursuant to a permit issued by the Town or its agents; and

WHEREAS, the Town Plan Commission has prepared a draft ordinance in this regard in consultation with Town staff, and has referred its recommendation in this matter to the Town Board for consideration; and

WHEREAS, upon due notice as specified in Section 17.10(6) of the Town of Delafield Zoning Ordinance, the Town Board held a public hearing in this matter on June 11, 2013, pursuant to Section 17.10(5)(F) of the Town of Delafield Zoning Ordinance; and

WHEREAS, the Town Board of the Town of Delafield, having carefully reviewed the recommendation of the Plan Commission, having determined that all procedural

requirements and notice requirements have been satisfied, and having given the matter due consideration, and having based its determination on the effect of the zoning amendment on the health, safety and welfare of the community, and having given due consideration to the municipal problems involved as well as the impact on surrounding properties as to noise, dust, smoke and odor, hereby determines that the zoning amendment will not violate the spirit or intent of the Zoning Code for the Town of Delafield, will not be contrary to the public health, safety or general welfare of the Town of Delafield, will not be hazardous, harmful, noxious, offensive, or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse effect on the property values and general desirability of properties affected by these zoning amendments, and further finds that these amendments will be consistent with the Town of Delafield Comprehensive Plan.

NOW THEREFORE, The Town Board of the Town of Delafield, Waukesha County, Wisconsin, does hereby ordain as follows:

SECTION 1: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning Ordinance," Section 17.10 entitled "Administration and Enforcement," Section 17.10(5.5) entitled "Special Exception Due To Erroneously Permitted Work," to be inserted directly after Section 17.10(5) entitled "Amendments to Zoning Regulations or Map," is hereby created as follows:

17.10 ADMINISTRATION AND ENFORCEMENT

...

5.5 SPECIAL EXCEPTION DUE TO ERRONEOUSLY PERMITTED WORK

The Town Board is authorized to grant a special exception to waive or modify any requirements of this Ordinance if, in the judgment of the Town Board, it would be inappropriate to apply literally the provisions of this Ordinance due to erroneously permitted work, to the extent deemed just and proper on a case-by-case basis after receiving and considering a recommendation from the Town of Delafield Plan Commission. The procedures and standards to be applied are as follows.

A. Procedure s.

1. Petition.

A party seeking a special exception shall file a petition with the Town Clerk. The petition shall include all of the following:

- a. Plat of Survey. A plat of survey, drawn to a reasonable scale and properly dimensioned, shall be prepared and certified by

a surveyor registered by the State. Such survey shall bear the date of the survey, which shall be within one year of the application for the special exception. The survey shall also show the following:

- (1) The boundaries of the property involved.
 - (2) The location of the centerline of any abutting streets.
 - (3) The ordinary high water line of any stream or lake on which the property abuts.
 - (4) The location on the property of any existing buildings, structures, hard surfaces, including the measured distances between such buildings and structures and the lot lines, and a chart indicating the area, measured in square feet, of each structure or hard surface.
 - (5) The location and grade of the existing driveways and parking areas.
 - (6) The nearest portion of such buildings and structures and the centerline of any abutting street.
 - (7) The nearest portion of such buildings and structures and the ordinary high water line of any abutting stream or lake.
 - (8) The proposed floor elevation of all existing buildings and structures in relation to the existing and/or established grade of any abutting streets and the ordinary high water line of any abutting stream or lake.
 - (9) The elevation and setback of any existing buildings or structures on adjacent parcels within 200 feet of any existing buildings, structures or additions.
- b. The names and addresses of the owners of all properties within 300 feet of the property involved.
 - c. A detailed written description of the existing development or use, and conditions for which the special exception is sought.
 - d. Any further information as required by the Town Staff, Town Plan Commission, or Town Board to facilitate the making of an evaluation of such request, such as, parking, traffic impact, landscaping treatment, drainage, sanitary sewer, erosion control and other factors as would be pertinent including the impact on public facilities.

2. **Fee.**

The petition shall be accompanied by a fee payment as set from time to time by the Town of Delafield Town Board to defray the cost of publication, notification, and holding a public hearing, administrative expenses and expenses of Board members. The Petitioner shall also pay reimbursement to the Town of Delafield for all costs incurred for legal, planning, engineering, and administrative work necessary to administer the application and oversee all procedures and activities related to the application.

3. **Plan Commission Evidentiary Hearing.**

The Town Plan Commission shall hold an evidentiary hearing upon receipt of such petition. All interested persons may be heard, in sworn oral testimony. Notice of such hearing shall be provided as described in 17.10(6) of this Ordinance, to the same extent as though this were consideration of a conditional use.

4. **Plan Commission Findings and Recommendation.**

As soon as practicable following the evidentiary hearing, the Town Plan Commission shall make written findings and a recommendation to the Town Board, regarding whether the petitioner has proved an adequate basis for granting a special exception, and if so, regarding any conditions that the Plan Commission recommends be included in any such grant of a special exception.

5. **Town Board Action.**

The Town Board shall review the recommendation of the Town Plan Commission, and make a decision in writing, of whether to grant, conditionally grant, or deny the requested special exception.

B. Basis of Approval.

An application for a special exception may be approved, denied, or approved with conditions. The Town Board shall consider the recommendation of the Town Plan Commission, but is not bound to follow the Town Plan Commission's recommendation. The Town Board may rely upon the sworn testimony received by the Town Plan Commission, or in its discretion the Town Board may take additional testimony from any witness(es) of their choosing. In order to approve or conditionally approve the special exception, the Town of Delafield Town Board must find that the applicant has demonstrated all of the following:

1. *Permit Error.* That the Petition seeks approval of a structure that was constructed pursuant to a building permit or zoning permit issued by

the Town of Delafield Building Inspector or Zoning Administrator, in accordance with the plans filed with the permit application and all conditions of the permit approval, and only after completing construction was the structure found to be in violation of the yard, building height, area, setback, offset, or open space requirements of this Ordinance.

2. *Preservation of Property Rights.* That the special exception is necessary for the preservation and enjoyment of substantial property rights possessed by the applicant.
3. *No Substantial Detriment.* That the special exception will not create substantial detriment to adjacent property or the general desirability of the Town of Delafield and its environs, and will not materially impair or be contrary to the purpose and spirit of this Ordinance, or the adopted Town of Delafield Comprehensive Plan, or the public interest.

C. Determination.

The action of the Town of Delafield Board shall be stated in writing, and shall include findings of facts setting forth the basis for the decision. If a special exception is granted, or is conditionally granted, it shall be subject to the written approval of the applicant, and upon such approval it shall be recorded at the office of the Waukesha County Register of Deeds. Such recorded document shall be in a form approved by the Town Attorney and shall include all of the following: (a) A description of the particular non-compliant conditions on the property that are allowed to remain; (b) all conditions imposed by the Town Board upon the grant of the special exception; (c) a statement that in the event a non-compliant structure or use is destroyed or otherwise removed from the property, either wholly or in part, for any reason, such non-compliant structure or portion thereof shall not be replaced; (d) a statement that the grant of a special exception under this Section 17.10(5.5) does not render the structure or use legal non-conforming, and no legal non-conforming rights shall apply. The decision of the Town of Delafield Town Board shall be final, and shall not be subject to appeal to the Zoning Board of Appeals.

SECTION 2: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the

ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

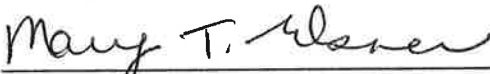
Dated this 25th day of June, 2013.

TOWN OF DELAFIELD



Paul L. Kanter, Town Chair

ATTEST:



Mary T. Elsner, CMC, WCMC, Town Clerk

Published and/or posted this 16th day of July, 2013.