

STATE OF WISCONSIN WAUKESHA COUNTY TOWN OF DELAFIELD

ORDINANCE 204-08

*Adopted
10/28/14*

AN ORDINANCE TO AMEND SEVERAL SECTIONS
OF CHAPTER 18, LAND DIVISION AND DEVELOPMENT CONTROL,
OF THE MUNICIPAL CODE
FOR THE TOWN OF DELAFIELD, WAUKESHA COUNTY, WISCONSIN

WHEREAS, the Town Board for the Town of Delafield adopted land division regulations for the Town of Delafield and has amended such regulations from time to time; and

WHEREAS, the land division regulations, as amended, are codified as Chapter 18 of the Town of Delafield code of ordinances entitled "Land Division and Development Control," and

WHEREAS, Wisconsin Statutes Section 236.45(2) allows the sale or exchange of parcels of land between owners of adjoining property under certain circumstances if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by Chapter 236 Wisconsin Statutes or other applicable laws or ordinances; and

WHEREAS, many times when land is transferred pursuant to this statute, the Town of Delafield only learns of the matter long after the transaction occurred, and only then can determine whether the transfer was in compliance with applicable laws; and

WHEREAS, when violations are found after the fact, the time and expense to pursue enforcement is substantial; and

WHEREAS, the property owner can suffer substantially if land is transferred improperly pursuant to the statute, because it could render the property illegal, and prevent land being used for any number of purposes, including possible cause to deny the issuance of building permits for such land; and

WHEREAS, on or about January 24, 2014, the State of Wisconsin Attorney General issued an opinion which concluded that municipalities (a county in that case, but equally applicable to the Town of Delafield) have the authority to require prior review of sales or exchanges of parcels between adjoining landowners in order to determine whether the division would comply with applicable laws; and

WHEREAS, the Wisconsin Attorney General further concluded that the municipalities would have the power to impose a fee to offset all or part of the cost of such limited review; and

WHEREAS, the Wisconsin Legislature adopted and the Governor signed 2013 Wisconsin Act 280, which places limits on a municipality's authority to require security for the construction of necessary private and public improvements related to a proposed plat; and

WHEREAS, such limitations increases the chance that necessary private and public improvements are not properly secured and may become a financial burden to the Town of Delafield to correct; and

WHEREAS, such limitations increases the chance that necessary private and public improvements are not properly secured and may become a financial burden to the Town of Delafield to correct; and

WHEREAS, upon the recommendation of the Town of Delafield zoning administrator this matter was submitted to the Town of Delafield Plan Commission for its consideration at the October 21, 2014, commission meeting, pursuant to Wisconsin Statutes Section 236.45(4); and

WHEREAS, following publication of a Class 2 notice as required by Wisconsin Statute Section 236.45(4), a public hearing was held on October 28, 2014 before the Town of Delafield Town Board; and

NOW, THEREFORE, the Town Board of the Town of Delafield, Waukesha County, Wisconsin DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 18 of the Town of Delafield Municipal Code entitled "Land Division and Development Control," Section 18.01 entitled "PURPOSE AND GENERAL PROVISIONS," Subsection (2) entitled "GENERAL PROVISIONS," Subsection (a) entitled "Jurisdiction," Subsection 2. d. is hereby repealed and recreated as follows:

- d. The sale or exchange of parcels or land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes and meet all specifications required by these regulations, the zoning ordinances, and other applicable laws and ordinances, subject to the review procedures described in Section 18.11.

SECTION 2: Chapter 18 of the Town of Delafield Municipal Code entitled "Land Division and Development Control," Section 18.02, entitled "DEFINITIONS," Subsection (2) entitled "SPECIFIC WORDS AND PHRASES," Subsection (j) entitled "Subdivision," is hereby repealed and recreated as follows:

Subdivision. (Rev. #00-510) The division of a lot, parcel or tract of land by the owner or his agent for the purpose of sale or building development where: the act of division creates 2 or more parcels or building sites of 5 acres each or less in area; or 2 or more parcels or building sites of 5 acres each or less in area are created by successive divisions of any part of the original property by any person within a period of 5 years; or where the division creates more than three (3) residential parcels or building sites of any size within 5 years. The following shall not constitute a subdivision: cemetery plats, assessor's plats, or the sale or exchange of parcels of land between owners of adjoining property, if additional lots are not thereby created and the lots resulting are not reduced below the minimum size required by applicable ordinances (but see Section 18.11).

SECTION 3: Chapter 18 of the Town of Delafield Municipal Code entitled "Land Division and Development Control," Section 18.07, entitled "REQUIRED IMPROVEMENTS AND RESERVATIONS", Subsection (1) entitled "GENERAL", Subsection (f) entitled "Approvals" is hereby repealed and recreated as follows:

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 an irrevocable letter of credit in an amount equal to double the cost of the improvements or the maximum allowed by law, whichever is lesser, as estimated by the Town Engineer. Although Developers may have a statutory ability to choose the form of a financial guarantee, if the Developer chooses any form other than a letter of credit, all of the improvements must be completed prior to the final plat being recorded. The form of the letter of credit shall be at the discretion of the Town Board after review and recommendation of the Town Attorney. If the improvements are not installed to the Town's satisfaction within the time required by the Town following approval of the final plat by the Town Board, the Board may cause all uncompleted work to be constructed and the parties executing the irrevocable letter of credit shall be firmly bound for the payment of all necessary costs thereof.

SECTION 4: Chapter 18 of the Town of Delafield Municipal Code entitled "Land Division and Development Control," Section 18.07, entitled "REQUIRED IMPROVEMENTS AND RESERVATIONS", Subsection (1) entitled "GENERAL", Subsection (g) entitled "Maintenance" is hereby repealed and recreated as follows:

- (g) Maintenance. (Rep. & rec. #93-352) The developer shall guarantee all material and workmanship for a period of one year after the acceptance by the Town by filing an irrevocable letter of credit or other satisfactory financial guarantee in an amount equal to 50% of the entire improvement costs, or the maximum allowed by law, whichever is lesser, as estimated by the Town Engineer. The type and form of the financial guarantee shall be at the discretion of the Town Board after the review and recommendation of the Town Attorney. If the Town determines that any repairs are required, the Town Clerk shall give the developer a 14-day written notice to perform such repairs. If the repairs are not begun within the 14-day period and completed within a reasonable time thereafter, as determined by the Town, the Town may complete the repairs. The costs thereof shall be billed to the developer and paid by the developer or drawn from the financial guarantee.

SECTION 5: Chapter 18 of the Town of Delafield Municipal Code entitled "Land Division and Development Control," Section 18.07, entitled "REQUIRED IMPROVEMENTS AND RESERVATIONS," Subsection (1), entitled "GENERAL," Subsection (k), entitled "Stage Development," is hereby repealed and recreated 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 letter of credit in a form 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, or the maximum allowed by law, whichever is lesser, 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 to the Town's satisfaction within the time required by the Town Board 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 financial guarantee shall be firmly bound for the payment of all necessary costs thereof.

SECTION 6: Chapter 18 of the Town of Delafield Municipal Code entitled "Land Division and Development Control," Section 18.07, entitled "REQUIRED IMPROVEMENTS AND RESERVATIONS," Subsection (2) entitled "CONSTRUCTION STANDARDS," Subsection (a) entitled "Streets," Subsection 4. is hereby repealed and recreated 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 financial guarantee in an amount determined by the Town Engineer. If the developer seeks approval of the final plat prior to installation of the final asphalt surface, the financial guarantee shall be in the form of a letter of credit approved by the Town Attorney. 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 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 7: Chapter 18 of the Town of Delafield Municipal Code entitled "Land Division and Development Control," Section 18.11, entitled "PRIOR REVIEW OF SALES OR EXCHANGES OF PARCELS BETWEEN ADJOINING LANDOWNERS," is hereby created as follows:

- 18.11 PRIOR REVIEW OF SALES OR EXCHANGES OF PARCELS BETWEEN ADJOINING LANDOWNERS. In every situation, regardless of circumstances, that a property owner seeks to convey land in a manner that would adjust a lot line or create or eliminate a lot line, and that conveyance does not require a certified survey map or subdivision plat pursuant to this ordinance, and where an adjacent property owner intends to acquire such interest in land, the proposed action shall be submitted to the Town of Delafield Plan Commission for prior review, before the conveyance documents are signed and before the conveyance is recorded in the office of the Waukesha County Register of Deeds. Such application must be filed with the Town Clerk along with a fee payment to offset all or part of the cost of this limited review, in an amount to be determined from time to time by separate resolution of the Town Board. The Town Plan Commission review shall be limited to considering whether the conveyance is in compliance with the Wisconsin Statutes Section 236.45(2)(am)(3) and the applicable laws cited therein, including these regulation, the Zoning Ordinances, and other applicable laws and ordinances. Such conveyance can only be approved if the same number

of lots exist prior to the conveyance as would exist after the conveyance. Such conveyance can only be approved if the resulting lots would all be both legal and conforming, even if any such lots are legal nonconforming prior to the conveyance, because the conveyance creates new lots which do not predate the ordinance and therefore have no legal non-conforming rights. Such conveyance must not be approved if the conveyance includes land that has a legal nonconforming use, because the legal nonconforming rights are limited to use of the preexisting lot. Such conveyance shall not be approved if any of the resulting lots and the existing improvements on the lots would be in violation of applicable open space requirements. Such conveyance shall not be approved if the conveyance would make an existing conforming structure illegal or nonconforming, or would increase the extent of any preexisting legal nonconformity of an existing structure.

SECTION 8: 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 9: EFFECTIVE DATE

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

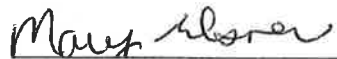
Dated this 28th day of October, 2014.

TOWN OF DELAFIELD



Paul L. Kanter, Chairman

ATTEST:



Mary Elsner, Town Clerk

Published and/or posted this 25th day of Nov., 2014.